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SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v.

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal From the Supreme Court of Michigan

JURISDICTIONAL STATEMENT

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March, 1978

(Continued on inside cover)

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TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON,

Appellants,

v

MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland,

and

CITY OF MIDLAND, a municipal corporation,

Appellees.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

Appellee,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

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v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

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IN THE
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No. .....

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
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MICHIGAN STATE BOUNDARY COMMISSION,
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CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal From the Supreme Court of Michigan

JURISDICTIONAL STATEMENT— THE OPINIONS BELOW

The Opinion of the Ingham County Circuit Court in *Township of Midland v. Michigan State Boundary Commission*, Docket No. 14598-C, appears as Exhibit A in the Appendix. The Opinion of the Ingham County Circuit Court in *Township of Novi v. State of Michigan*, Docket No. 14544-C, appears as Exhibit B in the Appendix. The Opinion of the Ingham County Circuit Court in *Township of Brighton v. Michigan State Boundary Commission*, Docket No. 15497-C, appears as Exhibit C in the Appendix.

The Opinion of the State of Michigan Court of Appeals in *Township of Midland v. Michigan State Boundary Commission*, 64 Mich. App. 700; 236 N.W.2d 551 (1975) appears as Exhibit D in the Appendix. The Opinion of the State of

Michigan Court of Appeals in the Brighton and Novi Township cases which were consolidated on appeal as *Township of Novi v. State Boundary Commission,* 67 Mich. App. 596; 242 N.W.2d 449 (1976), appears as Exhibit E in the Appendix.

The Decision of the Supreme Court of Michigan, decided on October 24, 1977, is reported as *Midland Township v. State Boundary Commission,* 401 Mich. 641, 259 N.W. 2d 326 (1977), and appears as Exhibit F in the Appendix.

Appellants' Application for Rehearing and Stay Order and Supporting Brief, dated November 14, 1977, appears as Exhibit G in the Appendix.

On December 16, 1977, the Supreme Court of Michigan denied to all appellants said Application for Rehearing and Stay Order without stating the grounds on which the denials were based. One such order, identical but for the varying names of plaintiffs and defendants as stated in the captions, appears as Exhibit H in the Appendix.

A notice of Appeal was filed with the Michigan Supreme Court on January 18, 1978 and is printed in a Supplemental Appendix to the Jurisdictional Statement.

JURISDICTIONAL STATEMENT—
STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellants, through their attorneys, file this statement of the grounds upon which it is contended that the Supreme Court of the United States has and should exercise jurisdiction to review the judgment entered by the Supreme Court of Michigan in this case.

Appellants, plaintiffs in the trial courts, are the Townships

of Midland, Novi, and Brighton and residents of each of the townships. Each township appellant and some township residents of each of the above townships filed suit against the Michigan State Boundary Commission. The adjacent cities were permitted to intervene as intervening defendants. Each appellant sought review of an Order of the State Boundary Commission approving a city's annexation of a portion of adjacent township land. In each case, annexation had been initiated by a resolution passed by the legislative body of a city pursuant to Home Rule Cities Act; 1909 Public Act 279; MCLA 117.1 *et seq;* MSA 5.1071 *et seq.,* as amended by 1970 Public Act 219.

Appellants challenge Section 9 of the Home Rule Cities Act (MCLA 117.9; MSA 5.2088), as being repugnant to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Section 9 of the Act grants some citizens the right to vote on annexation measures and denies that right to vote to other equally interesed citizens. The grant or denial of the right to vote is based upon whether there are more or less than 100 residents in the area proposed for annexation. Appellants will demonstrate in the following sections of this Jurisdictional Statement that the 100-or-less classification is arbitrary and is a violation of the Equal Proection Clause of the Fourteenth Amendment to the Constitution of the United States. The right being denied township and city residents is the right to vote, a fundamental right guaranteed by our Constitution and subject to the rigid test of strict scrutiny. Only a compelling state interest can justify infringement of the right to vote.

The complete text of Section 9 is included as Exhibit I. Subsection (4) provides as follows:

> If an annexation is approved, and if on the date the petition or resolution was filed *100 persons or less* resided

in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

—MCLA 117.9(4); MSA 5.2088(4). Emphasis added.

Subsection (5) grants the right to vote which is denied in subsection (4), to the residents of townships and of annexing cities when more than 100 residents live in the portion of the township to be annexed. It provides as follows:

If an annexation is approved, and if on the date the petition or resolution was filed *more than 100* persons resided in the area approved for annexation, the commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The commission's order shall become final 30 days after the date of the order unless within that 30 days a petition is filed with the commission which contains the signatures of at least twenty-five percent of the registered electors residing in the portion of the territory approved for annexation, in the annexing city or in the balance of the township. The commission after verifying the validity of any referendum petition shall order that a referendum on the question of annexation be held in each area from which a valid petition was filed. If a valid petition is not filed within the 30 days or if the majority of the electorate voting on the question in each area in which a referendum was held, voting separately, approve the annexation, the annexation shall be effective on a date set by order of the commission, otherwise the annexation shall not take effect.

—MCLA 117.9(5); MSA 5.2088(5). Emphasis added.

Section 9 also grants in subsection (8) the right to vote, denied in subsection (4), to residents of two cities involved in annexation where one city seeks to annex part of an adjacent city.

(8) Where the territory proposed to be annexed to any city is adjacent to the city and consists of a park or vacant property located in a township and owned by the city annexing the same, and there is no one residing thereon, such territory may be annexed to the city solely by resolution of the city council of the city or in any case where the territory proposed to be annexed is adjacent to the city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city, village, or township, such annexation may also be accomplished by the affirmative majority vote of the legislative body of such city and the approval of the legislative body of such adjoining city, village or township. An an alternate method, where there are no qualified electors residing in the territory proposed to be annexed to the city, other than the person or persons petitioning, a petition signed by a person or persons, firms, corporations, the United States government, or the state or any of its subdivisions who collectively hold the record legal title to more than ½ of the area of the land in the territory to be annexed is filed with the city council of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the city council of such city and the approval of the township board of such township. At least 10 days prior to the approval by the township board, the township treasurer shall notify, personally or by registered mail with return receipt demanded, the owners of all real property in the territory to be annexed as shown on the assessment rolls of the township at the last known address on file with the

township treasurer. *This section shall not be construed so as to give any city the authority to proceed hereunder to attach territory from any other city unless the question relative thereto has been voted upon by the voters of the entire cities affected, except as hereinbefore specifically provided where the territory proposed to be annexed is adjacent to a city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city.*

—MCLA 117.9(8); MSA 5.2088(8). Emphasis added.

The grant to city residents in subsection (8), of the right to vote is all encompassing, limited in only two circumstances. Subsections (4) and (5), make a distinction on citizens' right to vote on annexation matters involving annexation by a city of a township area *solely* on the basis of the number of residents in the township area sought to be annexed.

Subsection (5) grants a referendum vote on annexation measures to the residents of a township area proposed for annexation, to the residents of the remaining township and to the residents of the annexing city *if* more than 100 residents reside in the township area proposed for annexation. The votes of each of the three referenda are counted separately. A majority vote in each of the three referenda is required in order for the annexation to become effective. Subsection (4) denies a referendum vote, if 100 or less people reside in the area proposed for annexation, to all three groups—the residents of the area proposed for annexation, the residents of the remaining portion of the township, and the residents of the city.

Subsection (4) and (5) of Section 9 of the Home Rule Cities Act result in a "loophole." This "loophole" provision permits a city to gerrymander the boundary of an area of a township that is proposed for annexation so that 100 or less people reside

in the area and voters are thus denied a referendum vote. Thus, cities have two options to gobble up all or part of a township.

The first option is to use the less-than-100 residency qualification to gobble up valuable tax bases, such as shopping centers, factories, utilities, etc., one at a time. This procedure leaves the township with an area consisting of residents but a small tax base. These residents then may have their taxes simultaneously go up and governmental services reduced to a starvation basis because the economic tax base has been taken by the adjacent cities. The second alternative, for a city that could not gobble up a township of over 100 at one swoop, is to gobble it up in units of under 100 until nothing is left to the township. This is the procedure of cutting off the dog's tail an inch at a time.

There is no loophole provision for annexation matters involving annexation by one city of part of a second city. Residents of each city are given the right to vote under MCLA 117.9(8); MSA 5.2088(8), where one city seeks to annex part of an adjacent city.

Appellants challenged, in the highest court of the State of Michigan, Section 9 of the Home Rule Cities Act as being repugnant to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The decision of the Supreme Court of the State of Michigan upheld the validity of the state statute. Thus, this action is within the appellate jurisdiction of the Supreme Court of the United States by virtue of Title 28 U.S.C., Section 1257(2):

> By appeal where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The federal question before this court is substantial. The importance of the township form of government in a state with extensive rural areas cannot be underestimated. Thirty-eight percent (38%) of Michigan's population resides in townships and ninety-six percent (96%) of the land area of the State of Michigan is under the township form of government.[1] Section 9 of the Home Rule Cities Act has opened a veritable Pandora's Box. There are currently 73 resolutions for annexation of township land pending and many annexation measures will not be subject to a referendum vote because the resolutions involve township area with less than 100 residents. As a result, thousands of Michigan residents[2] are being denied

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[1]

The population figure was determined by the 1975 Intercensal population reported in *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Dept. of Commerce;* May, 1977. The land area was calculated by Dr. Dennis Gilliland (see affidavit, Exhibit J), from Michigan's total land area of 56,620 square miles as obtained from *Michigan Manual 1977-78;* Department of Management and Budget, State of Michigan, Lansing, Michigan; 1977, and the estimated land area of Michigan cities.

The estimated land area of Michigan cities, 2,136 square miles was computed by totalling the land area of the 183 cities with 2,500 or more inhabitants in 1970 as given in Table B-2 of *County and City Data Book;* Bureau of the Census, U.S. Department of Commerce; 1972. The total land area for these 183 cities was determined to be 1,474.2 square miles for an average of 8.06 square miles per city. Applying the average 8.06 to the total 265 cities gives an estimated total land area of 2,136 square miles under city government in 1970.

[2]

A comprehensive list of city annexation resolutions filed with the Michigan State Boundary Commission is included as Exhibit K in the Appendix. This list shows the voter registration and population of each city and township involved in an annexation resolution from January 1, 1972 through February 15, 1978. The list also indicates, when available, whether the area proposed for annexation contains 100-or-less residents. Table 8 of Section V(G) on page 93 shows that an estimated 16 out of 22 filings in 1977 and all 23 filings in 1978 involved proposed annexation areas of 100-or-less residents.

the right to vote, a fundamental right guaranteed to them by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The judgment sought to be reviewed was issued on October 24, 1977, by the Supreme Court of Michigan, the highest court of the state. Appellants filed an Application for Rehearing and Stay Order on November 14, 1977, and the application was denied on December 16, 1977.

An appeal to the United States Supreme Court from a judgment in a civil action from the highest court of a state shall be applied for within ninety days after the entry of such judgment. 28 U.S.C. §2101(c) (1959). In the event that a petition for rehearing has been timely filed, this Court has ruled that the time for appeal begins to run at the time said petition is ruled upon:

> [T]he consistent practice in civil and criminal cases alike has been to treat timely petitions for rehearing as rendering the original judgment nonfinal for purposes of appeal for as long as the petition is pending.
>
> —*United States* v. *Dieter,* 429 U.S. 6, 8 (1976).

This jurisdictional statement has been filed within ninety days of the date on which the Application for Rehearing was denied and is therefore timely.

JURISDICTIONAL STATEMENT— QUESTIONS PRESENTED BY THIS APPEAL

1. Is Section 9 of the Michigan Home Rule Cities Act, which grants the right of a referendum vote on proposed annexations when the *township area proposed for annexation* by

a city contains *more than 100 residents,* and denies the right of a referendum vote when the township area proposed for annexation contains *100 or less residents,* in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

2. Does Section 9 of the Michigan Home Rule Cities Act deny *residents of a township, who live outside a proposed annexation area* in the township, Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies the residents the right to a referendum vote on proposed annexation of an area of the township in which they reside because the township area proposed for annexation contains 100 or less residents, while it grants *those same township residents* the right to a referendum vote on proposed annexation of an area of the township if the township area sought to be annexed has more than 100 residents?

3. Does Section 9 of the Michigan Home Rules Cities Act deny *residents of one township* Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies them the right to a referendum vote on proposed annexation of an area of that township because the township area sought to be annexed has 100 or less residents, while granting the right to a referendum vote on proposed annexation to *residents of another township* which has an area sought to be annexed because that township area has more than 100 residents?

4. Does Section 9 of the Michigan Home Rule Cities Act deny *residents of a city* Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it is denies them the right to a referendum vote on proposed annexation by the city of an area of an adjacent township because the township area proposed for annexation

contains 100 or less residents, while it grants *those same city residents* the right to a referendum vote on proposed annexation by the city of an area of an adjacent township where more than 100 residents live in the township area sought to be annexed?

5. Does Section 9 of the Michigan Home Rules Cities Act deny *residents of one city* Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies them the right to a referendum vote on proposed annexation by the city of an area of adjacent township because the township area proposed for annexation contains 100 or less residents, while it grants the right to a referendum vote on proposed annexations to *residents of another city* which seeks to annex an area of an adjacent township because the township area proposed for annexation has more than 100 residents?

6. Does Section 9 of the Michigan Home Rule Cities Act deny the *residents of a township area proposed for annexation* by an adjacent city Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution when it denies these residnts a referendum vote on the proposed annexation of the township area because the township area has 100 or less residents, while it grants a referendum vote to *residents of other township areas proposed for annexation* by an adjacent city because those township areas have more than 100 residents?

7. Did the Michigan Supreme Court use an *inappropriate standard of review* in sustaining, against an Equal Protection challenge, the Michigan Home Rule Cities Act which unequally and arbitrarily grants the right to vote on proposed annexations by cities of township areas, when *the Michigan Supreme Court failed to apply a test of strict scrutiny* to the Michigan statute and thus did not require the state to demonstrate a *compelling*

state interest where a *fundamental right, the right to vote,* is infringed?

8. Is the classification in Section 9 of the Michigan Home Rule Cities Act which grants the right to a referendum vote on annexation measures when the number of residents in the areas proposed for annexation *exceeds 100* and denies the right to a referendum vote when the number of residents in the area proposed for annexation is *100 or less,* an *arbitrary and invidious classification* and therefore a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

9. Does Section 9 of the Michigan Home Rule Cities Act violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when it *grants* the *residents of a city* a voice in proposed annexations of adjacent township areas through a resolution of the city's legislative body, but *denies* the *residents of the township* of which the adjacent city seeks to annex all or part, a similar voice by its legislative body in proposed annexations?

10. Does Section 9 of the Michigan Home Rule Cities Act violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when it grants residents of two cities a vote on annexation measures involving annexation by one city of part of a second city, but arbitrarily denies a vote to township residents and city residents on proposed annexation measures involving annexation by a city of a township area with 100-or-less residents?

11. Are the standards of "100-or-less residents" and "more-than-100 residents" of Section 9 of the Michigan Home Rule Cities Act irrational classifications which violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

SUMMARY

The fundamental constitutional issue raised in this case is whether on annexation questions the Michigan Legislature can deny to persons residing in township areas of 100-or-less the right to a referendum vote that is guaranteed those residing in areas of over 100 population.

The Michigan Supreme Court relied exclusively on the *Hunter* case (*Hunter v. City of Pittsburgh,* 207 U.S. 161; 28 S.Ct. 40 [1907]), to deny voters in annexation areas of 100-or-less residents the right to a referendum vote granted other voters.

In relying on the *Hunter* case, the Michigan Supreme Court made three egregious errors. First, it took pure dicta of the *Hunter* case, based on a different factual situation, and expanded that dicta *to hold that individuals residing in township areas of 100 or less did not have the right to vote on the question of annexation that other voters had.*

In *Hunter,* the facts were the state legislature of Pennsylvania *consolidated* the cities of Allegheny and Pittsburgh. The Pennsylvania Legislature represented the citizens of both Allegheny and Pittsburgh, and had the constitutional power to set municipal boundaries. The Michigan State Boundary Commission, with exclusive jurisdiction on boundary annexation questions, is *not* a legislative body based on one-man, one-vote, a factual difference from *Hunter.* In this case, the facts are that in township areas proposed for annexation by a city there is no referendum vote on annexation proposals if the township area sought to be annexed contains 100-or-less residents while there will be a referendum vote if more-than-100 residents live in the township area proposed for annexation.

The second error of the Michigan Supreme Court was *not* to refer to the *Gomillion* case (*Gomillion v. Lightfoot,* 167

F. Supp. 405; 364 U.S. 339 [1967]), in which the United States Supreme Court, sixty years after the *Hunter* case was decided in 1907, substantially limited the *Hunter* decision to make it clear that it was not the intent of the United States Supreme Court to deny equal protection of voting rights to those residing in townships, regardless of population.

The third error was *not* to refer to *Lockport* (*Town of Lockport, New York v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259 [1977]).

Hunter, Gomillion and *Lockport* are discussed in detail, infra. A review of the Michigan Supreme Court decision in this matter being appealed from, as well as the index of authorities to the pleadings filed in this case, shows that neither the Michigan State Supreme Court nor any of the parties considered *Gomillion* or *Lockport*.

Since the Michigan Supreme Court issued the opinion appealed from in this case, a plethora of annexation petitions have been filed with the Michigan State Boundary Commission, almost all of those being for areas with less than 100 residents, thereby depriving those citizens of the right to vote.

JURISDICTIONAL STATEMENT— STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

The township has existed in Michigan as a form of local government since 1787. It provides services and representation to all Michigan residents who are not residents of a city. The Constitution of the State of Michigan of 1963 provides for townships as a Constitutional form of government:

> Section 17. Each organized township shall be a body corporate with powers and immunities provided by law.
>
> —Const. 1963, art. VII, §17.

> Section 34. The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.
>
> —Const. 1963, art VII, §34.

Although Const. 1963, art. 7, §34, is a new section of the state constitution, Const. 1963, art. 7, §17 was previously codified in Const. 1850, art. 11, §2 and Const. 1908, art 8, §16. The only modification regarding township authority from the two previous Michigan constitutions is elimination of language requiring that suits and proceedings by or against a township be in the township name. This modification of Const. 1850 and Const. 1908 was not substantive since the language added nothing to the meaning or legal effect of the section.

The case before this Court originated as three separate cases which were consolidated on appeal. In each case, a city sought to annex a portion of an adjoining township.

Residents of the townships and the townships themselves opposed the annexation proposals. The State Boundary Commission, after conducting public hearings as required by statute and considering the proposals, approved each annexation.

In each case, the township residents and the townships themselves sought review in circuit court in Michigan of the Commission's order approving the annexation. Each complaint raised several state constitutional issues which are not federal questions and are therefore not before this Court. Each complaint also challenged Section 9 of the Home Rule Cities Act, 1909 PA 279; MCLA 117.1 *et seq;* MSA 5.2701 *et seq.;* as amended by 1970 PA 219, as a violation of the

Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Section 9 of the challenged provision grants the right of a referendum vote on the question of a proposed annexation if the township area proposed for annexation by a city contains more than 100 residents. In that case, a separate referendum vote is granted in the area proposed for annexation, the remaining portion of the township and the city. If the area proposed for annexation contains 100 or less residents, no referendum vote is held and the annexation order of the State Boundary Commission becomes final without a vote of the electorate. Township residents, those in the area proposed for annexation and those in the remaining township, would vote "NO" on the proposed annexation in a referendum vote. That is why cities councils try to avoid a referendum vote and draw the boundaries of areas proposed for annexation so that they contain 100 or less residents. The residents of the annexing city also have a right to vote "NO".

Section 9 of the challenged provision allows a city to draw the boundaries of an area proposed for annexation so that there are 100 or fewer residents, and the residents of the township, the city and the area proposed for annexation are all denied a referendum. This enables cities to take away the tax base of townships as in Midland and Novi Townships in the case at bar.

The real economic issue is who gets an increased tax base of valuable property with few or no residents, the people of a city or the people of a township? The Home Rule Cities Act permits a city council with the approval of the State Boundary Commission to annex adjacent, valuable tax property such as shopping centers, utilities and factories, *without a vote* of anyone in the township or city provided there are 100-or-less residents in the township area proposed for annexation. The

people of a township have no similar right to annex valuable tax properties in adjacent portions of cities.

B. OPERATION OF THE STATE BOUNDARY COMMISSION AND THE HOME RULE CITIES ACT

The Michigan State Boundary Commission was created by the Boundary Commission Act, 1968 PA 191, immediately effective November 15, 1968; MCLA 123.1001 *et seq.*; MSA 5.2242(1) *et seq.* The Commission consists of a chairman and two other state members serving staggered three-year terms, each of whom is appointed by the Governor with the advice and consent of the Senate (§2). In addition, with regard to the matters in a given county, there are two county members, each of whom is appointed to a three-year term by the presiding probate judge of that county, one of whom shall reside within a city and the other in a township (§5). As originally established, the Boundary Commission had jurisdiction over proceedings for the incorporation of home rule cities and home rule villages, and over the consolidation of cities and/or villages with additional territory into home rule cities. Annexation by cities of adjoining township land was still handled by the respective county boards of supervisors, or by the Secretary of State, if territory in more than one county was affected, pursuant to the version of the Home Rule Cities Act, in effect at that time.

In 1970, Section 9 of the Home Rule Cities Act was amended by 1970 PA 219, to be effective April 1, 1971. The 1970 amendment to Section 9 provides that annexations by cities of adjacent land belonging to townships are to be processed by the State Boundary Commission in the same manner as petitions for incorporation, and are subject to the provisions of the State Boundary Commission Act. According to the Act, *the legislative body of a city may initiate annexation proceed-*

ings by filing an annexation resolution with the State Boundary Commission, or a township may initiate annexation proceedings by filing an annexation petition signed by one percent of the population or twenty percent of the registered voters of the area affected by the annexation. The Commission first examines a petition or resolution for legal sufficiency, and may retain it for consideration or reject it for lack of legal sufficiency (Section 8 of the Boundary Commission Act). The Commission conducts public hearings pursuant to Section 8 and examines the petition or resolution in relation to statutory criteria set forth in Section 9 of the Act. After consideration, the Commission may reject the proposed annexation or approve the proposed annexation with or without change of boundaries of the parcel proposed to be annexed. Section 9, as amended, further provides that the Commission's Order approving a city's annexation of township land shall be subject to a referendum vote provided that more than 100 persons reside in the area approved for annexation. *If 100 persons or less reside in the area approved for annexation, the Commission's order shall not be subject to a referendum vote.* The residents of the annexed portion of the township, the remaining portion of the township and the city are thus denied the right to vote. MCLA 117.9(4); MSA 5.2088(4). In such a case, the Commission sends a certified copy of its order to each city, township, county and village affected, and then annexation becomes effective on the date specified in the order, without a vote by the electorate.

C. PROCEEDINGS BELOW.

1. TOWNSHIP OF NOVI v. STATE BOUNDARY COMMISSION AND CITY OF NOVI

On April 23, 1971, the City Council of Novi filed an annexation resolution (docketed as 1971-AR-9) with the State Boundary Commission. The resolution sought the annexation of seven discontiguous parcels of land within the Township of Novi by the city of Novi. The combined population of the seven parcels of township land was less than 100 residents. The remaining parcel contained the balance of the township. More than 100 people resided in the eighth and final parcel.

The land proposed for annexation in the original resolution (71-AR-9) consisted of seven isolated parcels which had previously been disconnected from the Village of Novi by Circuit Court order pursuant to the so-called "Farmland Disconnection Act." MCLA 123.31; MSA 5.2221. The land was not urban in character; at least three of these parcels were still being farmed at the time of the State Boundary Commission's public hearing on the City of Novi's proposed annexation resolution.

The seven parcels contained less than a total of 100 residents, hence a finding by the Boundary Commission to permit annexation by the City would not be subject to a referendum vote by the township, the city, or the inhabitants of the township area to be annexed. The statute precluded all of those inhabitants from voting because an insufficient number of people, 100 or less, lived in the area proposed for annexation. The balance of the township, apart from the territory proposed for annexation, consisted of one small residential area known as Brookland Farms Subdivision. This area was *surrounded by the City of Novi, and contained more than 100 residents.* (See map of Novi included as Exhibit L in the Appendix). Had the small remaining area been included in the area proposed for annexation, all of the residents of both city and township would have been permitted to vote in separate referenda.

The minutes of a city council meeting concerning the proposed annexation show that the City of Novi considered the inclusion of the Brookland Farms area. It decided against inclusion for the reason that to do so would raise the number

of inhabitants to more than 100, thus subjecting the proposed annexation to a possible referendum vote and defeat by voters if the State Boundary Commission approved the city's annexation resolution.

Shortly after the filing of the resolution docketed as 71-AR-9, a subsequent resolution was filed, asking for the annexation of Brookland Farms. The township asked the Boundary Commission to consolidate the petitions in order to eliminate the alleged gerrymander, and to insure a referendum vote on the annexation proposal since more than 100 persons would live in the consolidated area, but the Boundary Commission refused to do so.

On June 9, 1971, the State Boundary Commission declared the original annexation petition (1971-AR-9), filed by the City of Novi, legally sufficient pursuant to the Boundary Commission Act and the Home Rule Cities Act as amended.

On July 7, 1971, the State Boundary Commission held a pre-hearing conference, for which no record has been filed. At the pre-hearing conference, the Commission received considerable evidence for use in its decision making process. Some of the evidence was later revealed at the public hearing; some was not.

On October 20, 1971, the State Boundary Commission held a public hearing pursuant to the Boundary Commission Act and the Home Rule Cities Act, as amended. Although the City of Novi had presented additional evidence to the Commission at the prehearing conference, the Township of Novi was limited by the Commission to a 25 minute presentation at the public hearing.

The State Boundary Commission received further evidence at a closed session held prior to the adjudicative meeting.

The State Boundary Commission held an adjudicative meeting to determine whether or not to approve the Novi annexation on January 26, 1972. By Order dated May 25, 1972, the State Boundary Commission approved the annexation resolution of the City of Novi docketed as Docket No. 1971-AR-9.

On June 26, 1972, the Township of Novi and residents of the township, as Plaintiffs, filed a petition for review of the city's annexation resolution and Boundary Commission Decision (1971-AR-9) involving the seven parcels with a total population of under 100, in the Ingham County Circuit Court, being Case No. 14544-C.

On June 26, 1972, the Circuit Court entered an Ex Parte Order Staying Proceedings, and on July 7, 1972, said Order was made permanent during the pendency of the petition for review, or until further order of the Court.

The Circuit Court for Ingham County, Michigan, granted the Motion for Summary Judgment made by the Plaintiff, Township of Novi, and held the Michigan State Boundary Commission's annexation order under its docket number 71-AR-9, to be null and void and of no force or effect. The Court permanently enjoined further proceedings pursuant thereto.

The Court's order found the 1970 amendment to the Home Rule Cities Act in violation of several Michigan constitutional provisions, including equal protecton provisions as follows:

> (2) *The classification of "100 persons or less" in 1970 PA 219 is not based upon such a difference in situation or circumstance as to constitutionally permit such division as the basis for denying the right or privilege of referenda to some and granting it to others* and accordingly violates Sections 1 and 2 of Article I of the 1963 Michigan Constitution.
>
> —Emphasis added.

Sections 1 and 2 of Article I of the Michigan Constitution of 1963 are equal protection provisions stated as follows:

> Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.
>
> Sec. 2. No person shall be denied the equal protection of the laws.

The *Novi* and *Brighton* cases were consolidated on appeal (*Township of Novi v. State Boundary Commission;* 67 Mich. App. 596; 242 N.W. 2d 449 (1976). In reviewing these cases, the Court of Appeals affirmed in part, and held the challenged annexation provision unconstitutional on state constitutional grounds.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The *Midland Township* cases were consolidated with the Novi and Brighton cases before the Supreme Court of the State of Michigan as *Midland Township v. State Boundary Commission;* 401 Mich. 641; 259 N.W. 2d 326 (1977). The Court reversed, upholding both the State Boundary Commission Act and the Home Rule Cities Act as constitutional.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

2. TOWNSHIP OF BRIGHTON v. STATE BOUNDARY COMMISSION AND CITY OF BRIGHTON

On March 17, 1972, the City of Brighton filed a resolution with the State Boundary Commission seeking the annexation of certain territory within the Township of Brighton, Livingston County, to the City of Brighton. This resolution was docketed as 72-AR-8.

The resolution involved land that the City of Brighton had designated as an area outside the city for future development known as the "Brighton Urban Browth Area," or "BUGA" (see map, Exhibit M). The "BUGA" area is contiguous to the city, and the city and the BUGA area are isolated from the balance of the township by Interstate Highway 96. In its annexation resolution, the city encompassed more than half of the BUGA area which included most of the land available for commercial development. Less than 100 residents lived in the area of the township proposed for annexation. The balance of the BUGA area was primarily residential and contained over 100 residents.

On June 14, 1972, the State Boundary Commission declared the city's annexation resolution for acquisition of township property legally sufficient.

On September 12, 1972, the State Boundary Commission conducted a public hearing concerning the Brighton annexation. At the hearing, the township objected to the city's annexation resolution on the grounds that the resolution was *gerrymandered* to keep the number of residents at 100-or-less, to avoid a referendum vote as per the statutory exemption.

The Boundary Commission rejected the township request that the resolution be adjusted to include the entire BUGA

area which would have required by statute that a referendum vote be held on the proposed annexation since more than 100 people lived in the entire BUGA area.

After the public hearing, the State Boundary Commission accepted evidence regarding the proposed annexation. The Commission held a second hearing, and declared afterwards that they would not receive further evidence. However, the Commission accepted further evidence.

The Boundary Commission held the adjudicative meeting to determine if the proposed annexation should be approved and conducted the vote in executive session.

On May 17, 1973, the plaintiffs, Township of Brighton and residents thereof, filed a complaint in Ingham County Circuit Court for review of the State Boundary Commission order which had approved the Brighton annexation.

The Circuit Court granted Summary Judgment to the plaintiffs and declared the challenged annexation provision of the 1970 amendment to the Home Rule Cities Act, in violation of the Michigan Constitution of 1963. The question of violations of the state constitution is not a federal question, and is not before the United States Supreme Court.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The *Novi* and *Brighton* cases were consolidated on appeal. (*Township of Novi* v. *State Boundary Commission;* 67 Mich. App. 596 [1976]). In reviewing these cases, the Court of Appeals affirmed in part, and held the challenged annexation provision unconstitutional on state constitutional grounds.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The *Midland Township* cases were consolidated with the Novi and Brighton cases before the Supreme Court of the State of Michigan (*Midland Township* v. *State Boundary Commission;* 401 Mich 641; 259 N.W. 2d 326 [1977]). The court reversed, upholding both the State Boundary Commission Act and the Home Rule Cities Act as constitutional.

Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

3. TOWNSHIP OF MIDLAND v STATE BOUNDARY COMMISSION AND CITY OF MIDLAND

On February 15, 1968, an elector petition to annex 319 acres of Midland Township was filed with the Midland Board of Commissioners, pursuant to the Home Rule Cities Act as it existed at that time. Procedures for initiating annexations have been changed by the creation of the State Boundary Commission in 1968, and the 1970 amendment to the Home Rule Act. (1970 Public Act 219). The petition was transferred on April 28, 1971 to the State Boundary Commission and docketed as 1971-AT-7.

On May 6, 1971, an annexation resolution which had been passed by the City Council for the City of Midland was filed with the State Boundary Commission and docketed as 1971-AR-11. The resolution requested the annexation of the remaining portions of Midland Township.

The two proceedings were treated separately by the Boundary Commission. The Commission held a pre-hearing conference on February 2, 1972, and public hearings on Docket Number 1971-AT-7 on February 2, 1972, and on Docket Number 1971-AR-11 on February 24, 1972.

In Midland, evidence which was extremely influential, probably even outcome-determinative, was submitted to the State Boundary Commission in written form by Dow Chemical Company and others outside of the view of the public and the township. These firms were not represented at the public hearing, and publicly submitted no evidence. The city declined to discuss publicly the pivotal issue, namely the real or imaginary threat of the loss of industry to the area if the annexation were turned down, choosing instead to submit evidence privately in writing. Dow Chemical Company, Dow Corning Corporation, the Midland Chamber of Commerce and Consumers Power Company submitted letters on the question of alleged loss of industry. These letters did not appear on the record until the adjudicative meeting, which was held in executive session. The township was never informed of the letters, and had no opportunity to offer rebuttal evidence. At least four of the seven commissioners, according to the record of the adjudicative meeting, found the material offered in the letters persuasive.

The Boundary Commission held its adjudicative meeting during which evidence was received and the final vote was taken, in executive session. The township attorney was present, but was excluded from the meeting.

The Midland annexation resolution was drawn with an irregularly shaped southern boundary (see Exhibit N), which excluded all residents from the area proposed for annexation. Had these residents been included in the annexation area, a referendum vote would have been required under prior law, giving the residents of the city, the township and the township area to be annexed an opportunity to exercise a veto power over the annexation proposal by defeating the referendum vote. The Boundary Commission denied a request by Midland Township to consolidate the annexation resolution (1971-AR-11) and the annexation petition (1971-AT-7) both of which were before the Commission for ruling from the city of Midland. Consolidation of the petition and the resolution would have eliminated the effect of the city's blatant gerrymander tactics, and necessitated a referendum vote on the annexation proposal.

When the Boundary Commission denied the township's request to consolidate the annexation resolution and petition, Midland township filed suit in Ingham County Circuit Court against the State Boundary Commission. The City of Midland was permitted to intervene as an intervening defendant. The City of Midland, Intervening Defendant, moved for an order in the Ingham County Circuit Court for a return of the annexation petition which had previously been transferred to the State Boundary Commission, back to the Midland County Board of Commissioners to conduct an election pursuant to the prior version of Section 9 of the Home Rule Cities Act or, in the alternative, for a remand of the annexation petition to the State Boundary Commission.

On November 9, 1973, the Ingham County Circuit Court entered a Corrected Summary Judgment, which ordered that the annexation petition be returned by the Boundary Commission to the Clerk of Midland County for "whatever action is deemed legally appropriate."

On November 20, 1973, the Midland County Board of Commissioners, by a 6 to 5 vote, ordered a special election under the provisions of Section 9 of the Home Rule Cities Act as it existed prior to the enactment of the 1970 amendment, which the Ingham County Circuit Court had held to be unconstitutional. Section 9 had originally provided for a referendum vote on annexation question in which the votes of the residents of the city and township were counted together. Cities received an obvious advantage under this provision since cities generally have a larger population and more registered voters than do townships. The 1970 amendment to Section 9 provided for a separate referendum election in the city, in the township area proposed for annexation and in the remaining portion of the township. A majority vote in favor of annexation now required in each of the areas subject to a referendum vote, in order for the proposed annexation to become effective.

In accordance with the resolution of the Midland County Board of Commissioners, a special election was held in the City of Midland and the Township of Midland on February 5, 1974; Township voters — 708 votes were cast against the annexation and 18 votes were cast in favor of the annexation; City voters — 1,868 votes were cast against the annexation and 4,882 votes were cast in favor of the annexation. The total combined vote was 2,576 against the annexation and 4,900 in favor of the annexation. The annexation by the city of part of the township was approved and became effective April 1, 1974. No votes were cast from the area proposed to be annexed as it was by design of the city council uninhabited.

Separate adjudicative meetings were held on the annexation resolution and petition on May 17, 1972, by the State Boundary Commission which issued separate decisions approving both annexations on June 27, 1972.

On July 13, 1972, Midland Township and some township

residents filed a Petition for Judicial Review of the decision of the State Boundary Commission approving the annexations with the Ingham County Circuit Court, in the matter entitled *Township of Midland, a Municipal Corporation in Midland County, Michigan, and Robert B. Chatterton, Plaintiffs vs. Michigan State Boundary Commission, Defendant.* A restraining order with an order to show cause was issued by Judge Reisig against the Boundary Commission.

On July 21, 1972, a temporary injunction was issued after a hearing.

The City of Midland was accepted as an intervening defendant and filed its Answer on August 8, 1972.

On September 28, 1973, plaintiffs were granted summary judgment since the annexation provisions of the 1970 amendment to the Home Rule Cities Act were found to be in violation of the Michigan Constitution. These state constitutional questions are not federal questions and are not before this court.

Plaintiffs townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

Defendant, State Boundary Commission, appealed the Midland case. The Court of Appeals affirmed the holding of the lower court *Midland Township v. State Boundary Commission*, 64 Mich App. 700 (1975). Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

The Novi and Brighton township cases were consolidated with the Midland Township case on appeal to the Michigan Supreme Court. The Supreme Court reversed and found for the defendants, upholding the Home Rule Cities Act, as amended, and the State Boundary Commission Act, as constitutional. *Midland Township v. State Boundary Commission*, 401 Mich. 641; 259 N.W. 2d 326 (1977). Plaintiff townships and township residents argued that Section 9 of the Home Rule Cities Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, but the court ruled in favor of defendants on that issue.

JURISDICTIONAL STATEMENT

A SUBSTANTIAL QUESTION HAS BEEN RAISED

This appeal raises the question of whether the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is violated by Section 9 of the Home Rule Cities Act (Michigan Compiled Laws Annotated 117.9; Michigan Statutes Annotated 5.2088). This "loophole" provision permits a city council to annex portions of a township in which 100 or less persons reside, without allowing those citizens who live in that portion of the township, the remaining portion of the township, and the city a referendum vote on the question of annexation. The same law provides for a referendum vote on proposed annexations in all three areas if more than 100 persons reside in the area of the township sought to be annexed. While it is conceded that the legislature has plenary power to establish the boundaries of local governmental units, it does not have the power to grant some voters in some units the right to vote, and deny some voters in other units the same right to vote.

The "loophole" provision encourages city councils to gobble

up valuable tax bases of townships one piece at a time by gerrymandering boundaries of the township area sought to be annexed so that a referendum vote on the proposed annexation is never held, and townships are left only with poverty stricken sections starving for governmental services because of a lack of tax base. A city's ability to expand its borders and tax base at the expense of adjacent townships is limited only by the city's appetite for more land and increased economic wealth, and by the size of the townships themselves.

However, in city versus city annexations, the Michigan law eliminates this "loophole" by granting a right to vote to all the voters of the cities affected, further emphasizing this discrimination.

REASONS RELIED ON FOR ALLOWANCE OF THE APPEAL

I.

THE SUPREME COURT OF MICHIGAN FAILED TO SUBJECT THE CHALLENGED STATUTE TO THE STRICT SCRUTINY TEST AS REQUIRED BY THE FOURTEENTH AMENDMENT, UTILIZED AN INAPPROPRIATE STANDARD OF REVIEW, AND NEGLECTED TO DELINEATE THE COMPELLING STATE INTERESTS NECESSARY TO UPHOLD THE CONSTITUTIONALITY OF THE LAW AGAINST AN EQUAL PROTECTION CHALLENGE.

A. Infringements on fundamental rights guaranteed by the Fourteenth Amendment must be subjected to a standard of strict scrutiny, not a test of reasonableness.

A state statute infringing on a fundamental right, such as the right to vote, and challenged on grounds that it violates

the Equal Protection guarantee of the Fourteenth Amendment, must be subject to strict scrutiny by the Court. A mere showing that the classification is reasonable is not adequate. The United States Supreme Court has rejected the standard of reasonableness in cases involving an abridgement of a fundamental right or involving a suspect classification (*Kramer* v. *Union School District No. 15*, 395 U.S. 621 [1969]).

The Supreme Court of Michigan (*Midland Township* v. *State Boundary Commission, et al.*, 401 Mich. 641, 259 N.W. 2d 326 [1977]), failed to strictly scrutinize the Home Rule Cities Act, but upheld it merely on the grounds that the classification was "not unreasonable." The Court stated that the classification bore a substantial relation to the object of the legislation (*Midland Township, supra*, at 666-667).

B. The Standard Of Review Of Statutes Which Abridge A Fundamental Right Such As Voting Requires A Delineation Of Compelling State Interests.

The standard used by the Michigan Supreme Court does not satisfy the compelling state interest requirement so often reiterated by the United States Supreme Court where the right to vote is involved. *Kramer, supra; Cipriano v. City of Houma*, 395 U.S. 701 [1969]; *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

C. If A State Statute Permits Submission Of Annexation Resolutions To The Electorate For Approval, It Must Do So In A Manner Which Does Not Violate The Equal Protection Guarantee.

In addition to utilizing an innappropriate standard of review, and failing to delineate compelling state interests necessary

to justify upholding discriminatory classification where a fundamental right has been denied, the Michigan Supreme Court relied exclusively on *Hunter* v. *City of Pittsburgh*, 207 U.S. 161 (1907), for the proposition that no citizen has a vested right or legally protected interest in the boundaries of a city, village or township.

> Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and *there is nothing in the Federal Constitution which protects them from these injurious consequences.*
>
> —*Hunter, supra*, 179. Emphasis added.

The Michigan Supreme Court relied on over-generalized dicta in *Hunter*, which its opinion repeatedly discloses in bar of consideration of the Constitutional principles relied upon by appellants.

Michigan cases have consistently adhered to the longstanding principle reiterated in *Koschay v. Barnett Pontiac, Inc.*, 386 Mich. 223; 191 N.W. 2d 334 (1971):

> In the preparation of an opinion, the facts of the case are in mind. It is prepared with reference to such facts, and when considered in connection therewith, will generally be found satisfactory. When, however, an attempt is made to pick out particular parts or sentences, and apply them indiscriminately in other cases, nothing but confusion and disaster will be likely to follow. In other words, the opinion and decision of a court must be read and examined as a whole in the light of the facts upon

which it was based. They are the foundation of the entire structure which cannot with safety be used without reference to them.

—386 Mich. 223, 230-231, 191 N.W.2d 334, 338 (1971).

What has thus been written in our state was proclaimed originally by Chief Justice Marshall when one of his opinions, indicative language and all, was cited to the Supreme Court as controlling of *Marbury v. Madison*, 1 Cranch 137 (1803). *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), chronicles the event:

A like situation was presented in the case of Cohens v. Virginia, 6 Wheat 264, 399, 5 L Ed 257, in respect of certain general expressions in the opinion in Marbury v Madison, 1 Cranch 137, 2 L Ed 60. Chief Justice Marshall, who delivered the opinion in the Marbury case, speaking again for the court in the Cohens case, said: "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

—295 U.S. 602, 626-627 (1935).

However, there is some question as to the unbridled authority of *Hunter*. In *Gomillion v. Lightfoot*, 167 F. Supp 405; *aff'd* CA 270 F.2d 594; *rev'd.* other grounds 364 U.S. 339 (1967), the Court said:

Thus, a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitutions considered in those cases.

The *Hunter* opinion itself intimates that a state legislature may not be omnipotent even as to the disposition of some types of property owned by municipal corporations, 207 U.S. at pages 178-181, 28 S.Ct. at pages 46-47. Further, other cases of this Court have refused to allow a State to abolish a municipality or alter its boundaries, or merge it with another city. [Citations omitted]. . . . For example, in *Port of Mobile v. United States ex rel. Watson* the Court said:

"Where the resource for the payment of the bonds of municipal corporations is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power, and leaves no adequate means for the payment of the bonds, is forbidden by the Constitution of the United States, and is null and void." *Port of Mobile v. United States ex rel. Watson*, 116 U.S. at page 305; S. Ct. at page 405.

This line of authority *conclusively shows that the Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution.*

—*Gomillion, supra,* at 344-45. Emphasis added.

The *Hunter* case held that people have no constitutional right to a particular form of local government. IT DID NOT HOLD THAT PEOPLE LOST THEIR CONSTITUTIONAL RIGHTS OF EQUAL PROTECTION AND DUE PROCESS BECAUSE OF THE UNIT OF GOVERNMENT IN WHICH THEY RESIDED.

For example, there is no constitutional right to be in a particular state legislative or congressional district. BUT THERE IS A CONSTITUTIONAL RIGHT FOR THE CITIZEN TO HAVE AN EQUAL VOTE REGARDLESS OF WHICH LEGISLATIVE OR CONGRESSIONAL DISTRICT IS CHOSEN AS A RESIDENCE. See *Reynolds v. Sims*, 337 U.S. 533 (1964).

The basic error the Michigan Supreme Court made was to extend the doctrine of the *Hunter* case to say that not only did a person have no constitutional right to a particular form of local government—BUT HE ALSO WAIVED CONSTITUTIONAL RIGHTS TO EQUAL VOTING RIGHTS BY CHOOSING A PARTICULAR FORM OF LOCAL GOVERNMENT AS A RESIDENCE. The Court failed to distinguish the facts in *Hunter* from those in the instant case. In *Hunter*, the facts were the state legislature of Pennsylvania *consolidated* the cities of Allegheny and Pittsburgh. The Pennsylvania Legislature represented the citizens of both Allegheny and Pittsburgh, and had the constitutional power to set municipal boundaries. The Michigan State Boundary Commission, with exclusive jurisdiction on boundary annexation questions, is *not* a legislative body based on one-man, one-vote, a factual difference from *Hunter*. In this case, the facts are that in township areas proposed for annexation by a city there is no referendum vote on annexation proposals if the township areas sought to be annexed contains 100-or-less residents while there will be a referendum vote if more-than-100 residents live in the township area proposed for annexation.

Hunter is silent on the powers of a non-legislative agency such as the Michigan State Boundary Commission. While *Hunter* stands for the proposition that a state *legislature* has plenary power to establish the boundaries of local governmental units, it is, in effect, limited by *Gomillion* which holds that a *legislature's* power is subject to, and circumscribed by, the United States Constitution. The *Hunter* case did not address the central issue before this Court in the instant case that the right to vote is fundamental and protected by the guarantees of the Equal Protection Clause of the Fourteenth Amendment. Even though the legislature need not submit annexation questions to the electorate, a legislative grant by statute to that state's citizens to vote on such questions must be uniform, and free of arbitrary classifications. The denial of the right to vote in annexation questions to residents in areas subject to annexation resolutions, i.e., where the population of the area sought to be annexed is 100-or-less, to residents of the remaining portion of the township and to the residents of the city seeking to annex a portion of the township is arbitrary and denies these citizens of the opportunity to exercise the fundamental right to vote.

The Michigan Supreme Court failed to characterize the issue before it as one involving the denial of the voting franchise. It did not address the Constitutional requirement of measuring the statute and its denial of the right to vote against the rigid strict scrutiny test, nor did it identify a compelling state interest.

The Michigan Court's justification for upholding the challenged statute places economic expedience and concerns above the importance of a citizen's fundamental right to vote.

> The challenged classification . . . tends to prevent venal abuses which there is reason to believe may occur if few persons (or a small group of persons) have absolute power

to prevent an annexation economically advantageous to other persons or the community at large . . .

—*Midland Township v. State Boundary Commission;* 401 Mich. 641, 667; 259 N.W.2d 326 (1977).

The prevention of venal abuses—the possibility that a small number of voters will "prevent an annexation economically advantageous to other persons or the community at large"—does *not* rise to the level of demonstrating a compelling state interest sufficient to justify disenfranchising interested voters.

A comprehensive tabulation of the number of registered voters and the populations of the townships and cities which are affected by the annexation resolutions filed with the State Boundary Commission from January 1, 1972 through February 15, 1978 is included as Exhibit K in the Appendix. The total number of registered voters residing in townships affected by annexation resolutions filed by cities in the first two months of 1978 alone is 41,636 and the total number of registered city voters for the same period is 83,844. The total number of registered voters affected by annexation resolutions filed in 1977 is 34,833 for townships and 23,296 for cities.[1]

Of these voters residing in both townships and cities, all of whom have an interest in proposed annexations, some voters may be able to participate in a referendum vote on proposed annexations and some voters may be denied an equal right to participate in a referendum vote on proposed annexations as a result of the 100-or-less population classification of Section 9 of the Michigan Home Rule Cities Act. Many of these voters will be denied an equal right to vote on several proposed annexations because the adjacent city council has filed multiple annexation resolutions seeking annexation of several parcels of land within the same township.

[1] See Exhibit K for a comprehensive list of city annexation resolutions filed with the Michigan State Boundary Commission from January 1, 1972 to the present.

D. The Michigan Supreme Court Was In Error When It Held That The 100-or-less Population Classification Was "Not Unreasonable."

In the Brief of Cross-Appellants to the Michigan Supreme Court, Appellant Townships demonstrated that the *"100 or less"* classification of the Home Rule Cities Act is irrational:

> The Michigan statute is either inscrutable as to its objectives, or at best it is irrational. It extends the referendum where the population is more numerous, and denies it where the population is sparse. But annexation is obviously more appropriate and better received where numerous and dense population factors create an urban environment and require urban-type services, and less appropriate and less acceptable to voters where sparse population creates rural environment and insignificant service requirements. *The 100-person standard reaches the pinnacle of irrationality when it denies the franchise to a tiny, densely settled area, or to a large, sparsely settled area of 100 or less people, but grants the right of referendum to areas of 100 or more people regardless of size and population density.*
>
> —Brief of Cross-Appellants to the Michigan Supreme Court, in *Midland Townships, supra.*

Although population is relevant as a basis for some classification, it is not always appropriate and is inappropriate in the case at bar.

The rule is well settled that under usual circumstances and for most purposes, the legislature may . . . employ population as a basis for classification . . . without violating any of the federal or state constitutional guarantees of equality (*Radice* v *New York*, 264 US 292, 44 S. Ct. 325) . . . It is a mistaken idea that because classification on the basis of population is sustainable in respect of legislation on certain subjects, it may be appropriate for all purposes of classification in legislation enactments (*State* v. *Columbia G. & S. F. Turnp. Co.*, 133 Tenn 446, 181 SW 682). Such a basis . . . must have a reasonable relation to the purposes and objects of the legislation, and must be based upon a rational difference in the necessities or conditions found in the groups subjected to different laws (*Chandler* v. *Louisville*, 277 KY 79; 125 SW 2d 1026). If no such relation and differences exist, the classification is invalid. (*Strong* v. *Dingnan* 207 Ill 384, 69 NE 909).

—16 Am Jur 2d 985.

In this case, no rationale has been demonstrated for allowing some the opportunity to vote on annexation questions and denying the opportunity to others. An arbitrary numerical distinction has been made based on population. There is no magic in the number 100. In California, *12* resident voters may retain their right to vote in an annexation issue. *Weber* v. *City Council of Thousand Oaks*, 9 Cal. 3d 950; 513 P.2d 601 (1973). The California statute is cited with approval by the Michigan Supreme Court in *Midland Township, supra* at 667; yet no justification or Constitutional basis for disenfranchising *11* people in California and 100 in Michigan is advanced. It is as unconstitutional to disenfranchise one qualified voter as it is to disenfranchise 11,100, or more. A more rigorous delineation of the State's interest in discrimination on the basis of population is thus required.

E. Georgraphy, Not Population, May Be Considered In Annexation Questions.

In a Colorado case, the issue of voters' rights in annexation issues was raised. The United States Supreme Court sustained a statute which denied electors the right of a referendum vote where the area to be annexed was more than two-thirds contiguous with the annexing area. *Adams v. City of Colorado Springs*, 308 F. Supp. 1397 (1970); *aff'd.* 399 U.S. 901 (1970).

The Court held: "Greater or lesser contiguity with a municipality is about the *only reasonable test* for the legislature to provide for unilateral annexation." *Adams, supra* at 1404. Emphasis added.

As Appellant Townships pointed out to the Supreme Court of Michigan, it should be observed that a township area with two-thirds or more contiguity with the annexing city must in fact resemble a peninsula jutting into the annexing city. The Colorado statute cited in *Adams, supra*, denies the right to a referendum vote only where two-thirds or more contiguity exists. In such a situation, the appropriateness of the annexation arises from the close geographical interrelationships of the two areas. Greater or lesser contiguity with a municipality is about the only reasonable test for the legislature to provide for *unilateral* annexation. *Adams*, 308 F. Supp. at 1402 (1970).

Although the two-thirds or more contiguity statutory standard is reasonably related to the object of the legislation, a classification based on population alone is not. The effects of an unreasonable classification are shown in the case at bar. In *Township of Novi v. State Boundary Commission*, 67 Mich. App. 596, 242 N.W.2d 449 (1976), one of the cases consolidated on appeal to the Michigan Court of Appeals and included in

the instant appeal, the township area sought to be annexed consisted of seven separate, distinct, and discontiguous parcels containing less than 100 residents, but 72% of the township tax base. The sole remaining parcel of the township contained approximately 150 residents and an area of less than 75 acres. Such gerrymandering of township areas sought to be annexed is promoted and fostered by the challenged Michigan statute.

The discriminatory nature of the Home Rule Cities Act insures that an increasing number of Michigan voters will be disenfranchised as more and more cities, seeking to expand their tax base, look toward Michigan's 1,245[1] townships and initiate annexation of township residents and land.

Immediately following the Michigan Supreme Court decision herein appealed from forty-two (42) annexation resolutions were filed with the State Boundary Commission by city councils. An additional eleven (11) city annexation resolutions were filed with the State Boundary Commission on February 17, 1978, bringing the total number of city annexation resolutions filed with the Boundary Commission after the Michigan Supreme Court decision to fifty-three (53), compared with three (3) city annexation resolutions filed in 1977 prior to the decision of the Michigan Supreme Court.

A total of 178 city annexation resolutions have been filed from 1971 to February 15, 1978. The additional eleven (11) city annexation resolutions filed with the State Boundary Commission on February 17, 1978, bring the total to 189.

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[1]

Organization of Counties in Michigan, Registrations and Records Section, Michigan Department of State, Lansing, Michigan (January, 1977), and *Directory of Michigan Township Officials 1977-1979; The Michigan Townships Association; Lansing, Michigan* (1977).

The disposition of city annexation resolutions by the State Boundary Commission is shown in Table 1.

Table 1.

SUMMARY OF MICHIGAN STATE BOUNDARY COMMISSION DECISIONS[2] 1971-FEBRUARY 15, 1978

DECISION[3]	ANNEXATION RESOLUTIONS BY CITIES OF ADJACENT TOWNSHIP LAND
Approved	53
Denied	28
Rejected due to legal and formal errors	24
Pending	73
TOTAL	178[4]

[2]

This tabulation does not include eight annexation proposals which were transferred to the jurisdiction of the Michigan State Boundary Commission in 1971. Table 1 summarizes the annexation resolutions filed by cities with the State Boundary Commission as of June 30, 1977 as tabulated in Table 6 of *Annexation and Their Characteristics, A Review of Annexation Proposals Before the Michigan State Boundary Commission*, by Robert W. Terry. Criteria Analyst, Michigan State Boundary Commission, July 1977, and updated by the city annexation resolutions filed with the State Boundary Commission from July 1, 1977 to February 15, 1978 as listed in *Dockets of Filings*, Michigan State Boundary Commission; 1971-February 15, 1978.

[3]

There are four categories which indicate the status of each resolution in the decision making process of the State Boundary Commission. They are APPROVED (meaning approval of the proposed annexation with or without boundary adjustments), DENIED (meaning denial of the

Of the resolutions by cities for annexation of township land since 1971, 53 annexations have been approved by the State Boundary Commission and 73 resolutions are still pending. Since many of these resolutions for annexation are for township areas with 100-or-less residents, many more Michigan voters will be denied an equal right to a referendum vote upon approval by the State Boundary Commission.

II. A STATE STATUTE WHICH RESTRICTS A FUNDAMENTAL RIGHT SUCH AS VOTING MUST BE SUBJECT TO THE STRICT SCRUTINY OF THE COURT. ONLY A SHOWING OF COMPELLING STATE INTEREST WILL JUSTIFY UPHOLDING SUCH A STATUTE.

A. The Court Has Traditionally Accorded State Statutes A Presumption of Validity Only in the Area of Economic Regulation.

Traditionally, state statutes challenged on Equal Protection grounds were accorded the presumption of validity. As long as the scheme of classification was shown to have a rational basis, and the legislative means substantially furthered a legitimate legislative purpose, state statutes were given considerable deference and received minimal scrutiny.

In the area of economic regulation, the rational basis standard still prevails as state laws are subjected to a deferential

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proposed annexation), REJECTED (meaning the annexation resolution was screened out as being legally or technically insufficient) or PENDING (meaning that the annexation resolution has neither been approved, denied nor rejected as of this time).

[4]

An additional eleven (11) annexation resolutions by city councils were filed with the State Boundary Commission on February 17, 1978, bringing the total to 189.

standard of review. The classification challenged must be rationally related to a legitimate state interest; rational distinctions may be made with substanially less than mathematical exactitude. *New Orleans v. Dukes,* 427 U.S. 297 (1976).

B. The Deferential Review — Rational Basis Standard Has Been Supplanted By the Requirements of Strict Scrutiny And Compelling State Interest When Infringements of Fundamental Rights Are in Question.

More recently, the United States Supreme Court has insisted upon closer scrutiny of state statutes which curtail fundamental rights (*Graham v. Richardson,* 403 U.S. 365 [1971]), or involve "suspect classifications" (*Korematsu v. United States,* 323 U.S. 214 [1944]). The Court has declared that both categories of legislation are subject to a test of "strict scrutiny." The previous standard that state legislation must have a "rational basis" to satisfy Constitutional requirements is no longer sufficient to withstand an Equal Protection challenge.

A heavy burden falls on a state to demonstrate a compelling state interest which justifies any governmental intrusion into the area of fundamental rights guaranteed by the United States Constitution. The presence of a "legitimate legislative purpose" is insufficient to warrant a denial of the Equal Protection guarantee of the Fourteenth Amendment to the United States Constitution.

C. The Right To Vote Is A Fundamental Right. A Statute Which Restricts That Right Must Be Given Strict Scrutiny And Requires A Compelling State Interest To Withstand An Equal Protection Challenge.

The right to vote has been denominated a fundamental right. *Reynolds v. Sims, supra.* Statutes which deny *some* residents

the right to vote in a special purpose election are not entitled to a general presumption of Constitutionality. When the strict scrutiny test is applied, a statute which infringes upon a fundamental right such as voting will be upheld *only* if the state can demonstrate that it is necessary in order to satisfy a compelling state interest. *Kramer v. Union School District No. 15*, 395 U.S. 621 (1969).

In an earlier Equal Protection case involving the right to vote, the United States Supreme Court struck down a poll tax imposed by the State of Virginia as establishing a precondition for voting in violation of the Fourteenth Amendment to the United States Constitution. The Court said: "We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined."

> —*Harper v. Virginia State Board of Elections*, 383 U.S. 671 (1966).

In *Kramer, supra*, the Court overturned a state statute which restricted the right to vote in school board elections to owners or lessees of property or to parents of school age children. The Court held:

> In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. *Williams v. Rhodes*, 393 U.S. 32, 30 (1968). And, in this case, we must give the statute a close and exacting examination. "[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, *any alleged infringement of the right of*

> *citizens to vote must be carefully and meticulously scrutinized.*" *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). See: *Williams v. Rhodes, supra*, at 31; *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.
>
> Thus, state apportionment statutes, which may dilute the effectiveness of some citizens' votes, receive close scrutiny from this Court. No less rigid an examination is applicable to statutes denying the franchise to citizens who are otherwise qualified by residence and age. Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which *substantially affect their lives.* Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a *compelling state interest.*
>
> —*Kramer* at 626. Emphasis added.
>
> . . . [W]hen we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a "rational basis" for the distinctions made are not applicable. See *Harper v. Virginia Board of Elections*, 383 U.S. 663, 670 (1966). The presumption of constitutionality and the approval given "rational" classifications in other types of enactments are based on an assumption

that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality.

—*Id.*, at 627.

In a recent United States Supreme Court decision on voting rights, the Court reiterated the importance given to voting as a fundamental right when it overturned a one-year residence requirement for voter registration. *Dunn v. Blumstein*, 405 U.S. 330 (1972). The Court ruled that the requirement violated the Equal Protection clause of the Fourteenth Amendment because it denied some citizens the right to vote and consequently impinged on their right to travel.

In *Dunn*, the Court said:

Before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet *close constitutional scrutiny* . . .

—*Dunn, supra*, at 336.

It is certainly clear now that a *more exacting test* is required for any statute that "place[s] a condition on the exercise of the right to vote." *Bullock v. Carter, supra*, 405 U.S., at 143. This development in the law culminated in *Kramer v. Union Free School District No. 15, supra*. There we canvassed in detail the reasons for *strict review of statutes distributing the franchise*, 395 U.S., at 626-630, noting *inter alia* that such statutes "constitute the foundation of our representative society." We conclude that *if a challenged statute grants the right to vote to some citizens and denies the franchise to others, "the Court must determine whether the exclusions are necessary to*

promote a compelling state interest." Id., at 627, (emphasis added); *Cipriano v. City of Houma, supra*, 395 U.S., at 704; *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 205, 209 (1970). *Cf. Harper v. Virginia State Board of Elections, supra*, 383 U.S., at 670. This is the test we apply here.

—*Id.* at 337. Emphasis added.

A heavy burden of justification is on the State and the statute will be closely scrutinized in light of its asserted purposes.

—*Id.*, at 343.

The case at bar also presents a situation in which the right to vote is consistently denied in violation of the Equal Protection clause of the Fourteenth Amendment. The statute should be subjected to the test of strict scrutiny by the Court as enunciated in *Dunn, supra.*

Appellant Townships will demonstrate in Section IV that the Michigan Supreme Court failed to characterize the facts of this case as one involving the fundamental right to vote. As a result, the Court neither subjected the challenged legislation to the test of strict scrutiny enunciated in *Dunn, supra,* nor demonstrated the compelling state interest required to uphold a statute which restricts a fundamental right.

D. The United States Supreme Court Should Subject The Challenged Statute To Strict Scrutiny.

The right to vote is fundamental. A restriction on the right to vote in a referendum election is equally a restriction on a fundamental right. The referendum procedure is a basic instrument of democratic government. *Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1975).

In *Eastlake, supra,* the Supreme Court said:

> The Court of Appeals for the Ninth Circuit put it this way:
>
> > "A referendum, however, is far more than an expression of ambiguously founded neighborhood preference. It is the city itself legislating through its voters—an exercise by the voters of their traditional right through direct legislation to override the views of their elected representatives as to what serves the public interest." *Southern Alameda Spanish Speaking Organization v. City of Union City, California,* 424 F.2d 291, 294 (1970).
>
> Our decision in *James v. Valtierra,* upholding California's mandatory referendum requirement, confirms this view. Mr. Justice Black, speaking for the Court in that case, said:
>
> > "This procedure ensures that *all the people* of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services . . ." 402 U.S., at 143, 28 L. Ed. 2d 678, 91 S. Ct. 1331 (Emphasis added).
>
> Mr. Justice Black went on to say that a referendum procedure, such as the one at issue here, is a classic demonstration of "devotion to democracy . . ." *Id.,* at 141, 28 L. Ed. 2d 678, 91 S. Ct. 1331.
>
> —*Eastlake, supra,* at 678-679.

The Home Rule Cities Act (MCLA 117.9, Sections 4 and 5), provides for a referendum on an annexation petition by a city when the number of residents in the area to be annexed is more than 100. The right to participate in a referendum vote is denied under this statute if there are 100-or-less residents

in the township area proposed for annexation. The franchise is denied to otherwise qualified and registered voters in the annexed area, the surrounding township, and the city on the basis of a population figure, in violation of the Equal Protection guarantee of the Fourteenth Amendment of the United States Constitution. Therefore, the Michigan statute should be subjected to strict scrutiny.

III. THE RIGHT TO VOTE HAS BEEN DENOMINATED A FUNDAMENTAL RIGHT BY THE UNITED STATES SUPREME COURT.

The right to vote is fundamental in a free democratic society. *Reynolds v. Sims,* 377 U.S. 533 (1964). *Yick Wo v. Hopkins,* 118 U.S. 356 (1886). The United States Supreme Court has zealously safeguarded the right to vote over a long period of time, and in a variety of different situations, including apportionment (*Baker v. Carr,* 369 U.S. 186 [1962]), abolition of the poll tax as a prerequisite for voting (*Harper v. Virginia Board of Elections,* 383 U.S. 663 [1966]), durational residence requirements (*Dunn v. Blumstein,* 405 U.S. 330, 1000 [1972]), and local special elections (*Kramer v. Union Free School District No. 15,* 395 U.S. 621 [1969]).

IV. ONCE THE RIGHT TO VOTE HAS BEEN GRANTED, IT MAY NOT BE RESTRICTED IN A MANNER WHICH VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THIS PRINCIPLE APPLIES TO SPECIAL PURPOSE ELECTIONS AND TO REFERENDUM ELECTIONS.

A. The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution Guarantees All Qualified Voters The Right To Participate Equally In Elections.

In *Dunn v. Blumstein*, 405 U.S. 330 (1972), the United States Supreme Court, held:

> In decision after decision, this Court has made clear that a citizen has a *constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.* See, *e.g., Evans v. Cornman,* 398 U.S. 419, 421-422, 426; 90 S. Ct. 1752, 1754-1755 (1956); *Kramer v. Union Free School District, No. 15,* 395 U.S. 621, 626-628, 89 S. Ct. 1886, 1889-1890 (1969); *Cipriano v. City of Houma,* 395 U.S. 701, 706, 89 S. Ct. 1897, 1900 (1969); *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 667, 86 S. Ct 1079, 1081 (1966); *Carrington v. Rash* 380 U.S. 89, 93-94, 85 S. Ct. 775, 778, 779, (1965); *Reynolds v. Sims, supra.*
>
> —*Dunn v. Blumstein, supra.* Emphasis added.

The Supreme Court said in *Evans v. Cornman*, 398 U.S. 419 (1970):

> This Court has, of course, . . . recognized that the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised . . . At the same time, however, there can be no doubt at this date that *'once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.'*
>
> —*Evans v. Cornman, supra,* at 422. Emphasis added.

The state's interest is limited to establishing voter qualifications. Once a citizen complies with those voting qualifications and is granted the franchise by the state, additional lines may not be drawn which unconstitutionally discriminate against groups or individuals. *Harper v. Virginia State Board of Elections,* 383 U.S. 671 (1966).

B. Special Purpose Local Elections And Referendum Elections Are Equally Protected By the Fourteenth Amendment To The United States Constitution.

The Supreme Court has consistently extended the equal protection guarantee to special purpose elections and to referendum elections. In *Kramer, supra,* the Court overturned a state statute which disenfranchised some otherwise-qualified registered voters in a school board election. The statute restricted the right to vote to property owners or lessees, and to parents of school-age children. After subjecting the challenged statute to strict scrutiny, the Court held that the statute did not meet the exacting standard required by the Constitution for a selective restriction of the right to vote. The state must do more than merely demonstrate a rational basis for a classification which excludes voters.

> Whether classifications allegedly limiting the franchise to those resident citizens "primarily interested" deny those excluded equal protection of the laws depends, *inter alia,*

on whether all those excluded are in fact *substantially less interested* or affected than those the statute includes.

—*Kramer v. Union School District*, 395 U.S. 621 (1969). Emphasis added.

In a companion case to *Kramer, supra*, *Cipriano v. City of Houma*, 395 U.S. 701 (1969), the Court ruled that disenfranchisement of some of the registered voters in a special election was a violation of the Equal Protection Clause of the United States Constitution. The challenged statute granted the right to vote in a municipal bond election to property taxpayers, while denying the same right to qualified voters who were not property taxpayers. The proposed bond issue was being floated to finance the extension and improvement of Houma's municipally-owned utility systems. In noting that the excluded voters have a substantial interest in the operation of the utility, the Court said:

The challenged statute contains a classification which excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote. When, as in this case, the State's sole justification for the statute is that the classification provides a "rational basis' for limiting the franchise to those voters with a "special interest," the statute cleary does not meet the exacting standard of precision we require of statutes which selectively distribute the franchise." *Kramer v. Union Free School District No. 15, supra*, at 632. We therefore reverse the judgment of the District Court.

—*Cipriano, supra* at 706.

In both *Cipriano* and *Kramer*, the need for the state to demonstrate a compelling state interest is emphasized:

As we noted in *Kramer, supra*, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others, "the Court must determine whether the exclusions are necessary to promote a *compelling state interest.*" *Kramer v. Union Free School District No. 15, supra*, at 627. *Moreover, no less showing that the exclusions are necessary to promote a compelling state interest is required merely because "the questions scheduled for the election need not have been submitted to the voters." Id.*, at 629, n. 11.

—*Cipriano, supra* at 704. Emphasis added.

The Court acknowledged the right of the state to limit the franchise to qualified voters who have a special interest in an election. This includes those voters living within a special assessment district. Unless voters who are excluded from participation in an election are *substantially* less interested in the result such exclusion will not meet the standards required by the Fourteenth Amendment.

Assuming *arguendo*, that a State might, in some circumstances constitutionally limit the franchise to qualified voters who are also "specially interested" in the election, whether the statute allegedly so limiting the franchise denies protection of the laws to those otherwise qualified voters who are excluded depends on "whether all those excluded are in fact substantially less interested or affected than those the statute includes."

—*Cipriano, supra* at 704. (citing *Kramer, supra* at 632).

Section 9 of the Home Rule Cities Act permits voters a referendum on annexation proposals, if the township area proposed for annexation contains more than 100 residents. Section 9 denies that right to other qualified voters who have an equal and substantial interest in proposed annexations.

The argument that special purpose elections or referendum elections are equally protected by the Fourteenth Amendment to the United States Constitution, especially when the rights of voters of separate governmental entities are involved, was recently reaffirmed by this Court in *Town of Lockport, New York v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259 (1977).

In the State of New York, county government exercises general governmental powers in the form of a single-branch legislature. Cities, villages and towns within the county also exercise general governmental powers.

Any changes in the allocation of powers as articulated in a county charter can occur only if the provisions of the New York Constitution and implementing legislation are met. A county board of supervisors may submit a proposed charter to the voters for approval, *but* a majority of the voting city dwellers and a majority of the voting noncity dwellers is a mandatory requirement for adoption of the charter.

In 1972 a proposed charter for Niagara County, New York, was put to referendum. A majority of the city voters approved the charter and a majority of noncity voters rejected the charter.

The citizens organization then filed suit in the federal court seeking a declaration that the New York concurrent requirement was unconstitutional. A second charter was put to referendum in 1974 with the same results prevailing. The district court ruled that the concurrent majority requirement violated the Equal Protection clause of the Fourteenth Amendment and ordered implementation of the 1972 charter. Initially, the matter was vacated and remanded for reconsideration in light of provisions of the charter adopted in 1974. The district

court found no substantial difference between the two charters and, further, that the 1974 charter superseded the 1972 charter.

This Court reversed the decision of the district court and held that the concurrent majority requirement did not violate the Equal Protection clause of the Fourteenth Amendment.

This Court in *Lockport* initially explained why a concurrent majority scheme did not violate the "one man, one vote principle" by stating:

> The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interests in a "single-shot" referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives in the legislature. The policy impact of a referendum is also different in kind from the impact of choosing representatives—instead of sending legislators off to the state capitol to vote on a multitude of issues, the referendum puts one discrete issue to the voters. That issue is capable, at least, of being analyzed to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters. If it is found to have such a disproportionate impact, the question then is whether a State can recognize that impact either by limiting the franchise to those voters specially affected or by giving their votes a special weight. This question has been confronted by the Court in two types of cases: those dealing with elections involving "special-interest" governmental bodies of limited jurisdiction, and those dealing with bond referenda.
>
> —*Lockport, supra* at 266.

The decision also reviewed the rights of voters in special purpose units of government wherein it was concluded that apportionment for greater influence to constituent groups found to be most affected by the governmental unit's functions was permissible. *See: Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973). However, this Court was quick to reemphasize *Kramer, supra,* which held that the classification scheme must be reasonably precise.

This Court then went on to review two basic issues:

> [1] . . . whether there is a genuine difference in the relevant interests of the groups that the state electoral classification has created; and if so,
>
> [2] whether any resulting enhancement of minority voting strength nonetheless amounts to invidious discrimination in violation of the Equal Protection Clause.
>
> —*Lockport, supra,* at 268.

The first issue was answered in the affirmative when this Court said:

> The argument that the provisions of New York law in question here are unconstitutional rests primarily on the premise that all voters in a New York county have identical interests in the adoption or rejection of a new charter, and that any distinction, therefore, between voters drawn on the basis of residence and working to the detriment of an identifiable class is an invidious discrimination. If the major premise were demonstrably correct—if it were clear that all voters in Niagara County have substantially identical interests in the adoption of a new county charter, regardless of where they reside within the county—the District Court's judgment would have to

> be affirmed under our prior cases. *Cipriano v. City of Houma, supra. That major premise, however, simply cannot be accepted. To the contrary, it appears that the challenged provisions of New York law rest on the State's identification of the distinctive interests of the residents of the cities and towns within a county rather than their interests as residents of the county as a homogeneous unit.* This identification is based in the realities of the distribution of governmental powers in New York, and is consistent with our cases that recognize both the wide discretion the States have in forming and allocating governmental tasks to local subdivisions, and the discrete interests that such local governmental units may have qua units. *Reynolds v. Sims,* 377 US, at 580, 12 L Ed 2d 506, 84 S Ct 1362; *Abate v. Mundt,* 403 US 182, 29 L Ed 2d 399, 91 S Ct 1904; *Mahan v. Howell,* 410 US 315, 35 L Ed 2d 320, 93 S Ct 979.
>
> —*Lockport, supra,* at 268-269. Emphasis added.

This Court then concluded that the concurrent majority requirement for charter adoption did not violate the Equal Protection clause through this analysis:

> The ultimate question then is whether, given the differing interests of city and noncity voters in the adoption of a new county charter in New York, those differences are sufficient under the Equal Protection Clause to justify the classifications made by New York law. *City of Phoenix v. Kolodziejski, supra; Salyer Land Co. v. Tulare Lake Basin Water Storage District, supra; Hill v. Stone, supra. If that question were posed in the context of annexation proceedings, the fact that the residents of the annexing city and the residents of the area to be annexed formed sufficiently different constituencies with sufficiently different interests could be readily perceived. The fact of*

impending union alone would not so merge them into one community of interest as constitutionally to require that their votes be aggregated in any referendum to approve annexation. Cf. *Hunter v. City of Pittsburgh*, 207 US 161, 52 L Ed 151, 28 S Ct 40. Similarly a proposal that several school districts join to form a consolidated unit could surely be subject to voter approval in each constituent school district.

Yet in terms of recognizing constituencies with separate and potentially opposing interests, the structural decision to annex or consolidate is similar in impact to the decision to restructure county government in New York. In each case, separate voter approval requirements are based on the perception that the real and long-term impact of a restructuring of local government is felt quite differently by the different county constituent units that in a sense compete to provide similar governmental services. Voters in these constituent units are directly and differentially affected by the restructuring of county government, which may make the provider of public services more remote and less subject to the voters' individual influence.

The provisions of New York law here in question no more than recognize the realities of these substantially differing electoral interests. Granting to these provisions the presumption of constitutionality to which every duly enacted state and federal law is entitled, we are unable to conclude that they violate the Equal Protection Clause of the Fourteenth Amendment.

—*Lockport, supra,* at 271-273. Emphasis added. Footnotes omitted.

We argue that this Court's analysis emphasized above regarding the nature of annexation proceedings and the concomitant rights reposed in the distinctive entities is dispositive

of the issue herein. As this Court concluded, annexation proceedings consist of ". . . sufficiently different constituencies with sufficiently different interests . . ." (at 271).

Yet the rights of these constituents are trampled upon by the invidious scheme of the Section 9 of the Home Rule Cities Act. As this Court said above, ". . . [the] impending union alone would not so merge [cities and townships] into one community of interest . . ." (at 271).

Unless this Court declares Section 9 of the Home Rule Cities Act to be unconstitutional, the scheme which denies a referendum to residents whenever a township subject to annexation has 100 or less residents, will eliminate Equal Protection of the law which the Constitution affords to all citizens, regardless of the population of the area within which electors reside.

C. The Michigan Home Rule Cities Act Discriminates Between Classes of Voters in Violation of the Equal Protection Guarantee of the Fourteenth Amendment to the United States Constitution.

Historically, the right to a referendum vote on proposed annexations was granted to all interested and qualified voters in both the township and the city, regardless of the number of voters in the area to be annexed. The 1970 amendment to the Home Rule Cities Act limited that right to proposed annexation of areas that contained 100-or-less residents.

The Home Rule Cities Act (MCLA 117.9; MSA 5.2088) allows the legislative body of the *city* to determine whether a referendum vote shall be held, by permitting the city council to gerrymander the boundaries of the township areas proposed for annexation so that they include 100-or-less residents.

It is important to note that, in many cases, the people of a city do not want annexation and if given the opportunity, would vote the measure down. In other situations, the people of a township may support an annexation measure. This occurs when an adjacent city can provide services more economically, or where the city's need for expansion does not severely harm the township. Other annexation situations which arise are attempts by a city to annex township land which has a valuable tax base or is needed by the city for expansion, but will result in a substantial economic loss to the township. The latter situations are encouraged by the "loophole" provision of the Michigan Home Rule Cities Act because Section 9 of the statute gives the legislative body of a city the power to determine whether or not an annexation measure will be submitted to interested voters of three areas, the township, the township area proposed for annexation, and the city itself, in a referendum vote.

The effect of the "loophole" provision is to allow a city council to take the land it wants from a township. A township does not have a comparable right to annex land that it wants from an adjacent city.

The residents of the city are at least represented to the extent that annexation resolutions are proposed by duly elected city officials. Township residents do not have a comparable right of representation by the members of their township board in annexation resolutions proposed by city councils.

The residents of the township area sought to be annexed, and the residents of the remaining portion of the township have a substantial interest in the outcome of the referendum vote. The statute enunciates the interest of both groups of residents.

> The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed.
>
> —MCLA 117.9(1); MSA 5.2088(1)
> Emphasis added.

The common interest of all residents in the area is in the geographical, sociological and political integrity of the area, the potential loss or gain of revenue to the remaining township, the possibility of higher or lower taxes, and the potential for increased or diminished participation and control in governmental functions. This issue is discussed more fully in Section V.

The "loophole" provision does not take into consideration the interests of township residents or of township governments when it limits the voting franchise on an annexation issue. Instead, the statute grants the franchise to some voters and denies it to others, depending on whether the city has included greater or fewer than 100 residents in the township area proposed for annexation. The loophole allows city councils to gerrymander the boundaries of proposed annexation areas so that there are 100-or-less residents and to thus deny interested voters a referendum.

The guarantee of Equal Protection is not a guarantee against all classification. The power to legislate is the power to classify persons and objects for a legitimate purpose. It is legislation that invidiously discriminates against some voters and favors other similarly situated voters which is prohibited by the Equal Protection guarantee. *Douglas v. California*, 372 U.S. 353 (1963). Classifications must be reasonable, must not be arbitrary and capricious, and must have a rational basis in the

law. Once the reasonableness of a classification has been established, a law must affect all persons within a particular class under similar conditions equally, and it must include all persons who belong to the class.

In this case, the classification which distinguishes voters from non-voters is based on population in the township area sought to be annexed. Appellant Townships will demonstrate in the following section that this classification is not reasonable, and denies the Equal Protection guarantee of the Fourteenth Amendment to the Constitution of the United States by disenfranchising interested and otherwise qualified voters.

In the Opinion of the Ingham County Circuit Court in the *Township of Novi* case, no reasonable basis for distinguishing between the classes was found.

> If one resides in an area to be annexed containing upwards of 100 persons, he has the right to a referendum; if he resides in an area wherein less persons reside he is barred from such right or privilege. (MCLA 117.9(4) and MCLA 117.9(5)). No reasonable basis or reason for such division appears in the statute, and none comes to mind.
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> —*Township of Novi v. State of Michigan*, Docket No. 14544-C, Ingham County Circuit Court. See Exhibit B in the Appendix.

V. THE ENSUING HARM TO TOWNSHIPS AND THEIR RESIDENTS FROM THE HOME RULE CITIES ACT'S ARBITRARY AND UNCONSTITUTIONAL DENIAL OF THE RIGHT TO VOTE IS SUBSTANTIAL AND WILL CONTINUE UNLESS THE OPINION OF THE MICHIGAN SUPREME COURT IS REVERSED.

A. TOWNSHIPS ARE AN IMPORTANT FORM OF LOCAL GOVERNMENT IN MICHIGAN.

1. The Historical Role of Townships

> These wards, called townships in New England, are the vital principle of their governments, and have proved themselves the wisest convention ever devised by the word of man for the perfect exercise of self-government and for its preservation.
>
> —Thomas Jefferson, as quoted in Joseph A. Parisi, *A Manual for Township Government*, at viii (1973).

Most historians believe that the Anglo-Saxons brought the township form of government to England. The first written reference to township government dates back to 890. The township was the first form of government in America, established by the Mayflower Compact when the Pilgrims established a colony at Plymouth. Townships were also the first form of government in Michigan, established by the Northwest Ordinance in 1787. Many townships are still six miles square as they were first drawn by the Northwest Ordinance. The shape and size of others have since been altered due to annexation and incorporation.[1]

2. The Township in Michigan Today

There are two forms of townships in Michigan today, the general law township created by the Northwest Ordinance of 1787, and charter townships created by the Charter Township Act of 1947. The Charter Township Act originally granted broader powers to charter townships, but general law town-

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[1] Joseph A. Parisi, *A Manual for Township Government*, at xv-xvi (1973).

ships have been granted increasingly broad powers since 1947. Both forms of township government now have virtually identical powers with those of cities.

Townships are particularly important in a state like Michigan, which has large rural areas. Townships provide effective and economical services to the residents of both rural and suburban areas. The flexibility of the township form of government is demonstrated by the wide range of township sizes. According to the 1970 census, there were 489 townships in Michigan with a population under 1,000, and 52 townships with a population over 10,000.[2] Michigan township budgets ranged from $200 per year to over $3.5 million for the largest township. The majority of township budgets range from $75,000 to $500,000 and the total township expenditure in Michigan exceeds $200 million annually.[3]

This sum represented the cost in 1970, of providing over one-third of Michigan's population with local government, including services and voter representation. The historic township concept has grown and remains a practical, effective and economical way of serving a large segment of rural and suburban Michigan.

3. Michigan Townships have an important future.

The 1972 *Report of the Governor's Special Commission on Local Government* stressed the importance of townships and recommended that townships play an even more important role in local government in the future.

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[2]
Id at x.

[3]
Id at xvii.

The proposed approach calls for a system of local municipalities charged to provide strong and responsive local government to each area of the state, whether the area be rural, suburban, urban, or post-urban in its stage of development. Wherever there are people, they need and deserve a reliable, and responsive local unit of government.

A network of jurisdictionally exclusive, but mutually supportive, units of local government with an identity, local pride, and capacity to act that characterizes the best in present day local governance is desired. A system of local units should evolve in which undue competition for economic base, geographical territory, and political control would be minimized.

Implementation of the proposal calls for some modifications in municipal governments, especially *townships* because their *authority has increased steadily over the years.*

• • •

> Townships are an integral part of the local government system envisioned, but some changes should be made so that all townships can participate effectively. Critical to the proposal is an understanding that *the two types of municipalities (cities and townships) should have equal status in their relationship to each other and to the county.*
>
> —*Id.* at 19. Emphasis added.

The report proposed that the village form of local government be eliminated, and that *townships and cities should be the only two classes of municipal government and that townships be equal to cities in authority.*

The recommended guidelines are as follows:

(a) The Governor and the Legislature should adopt and implement, within the recommended local government framework, *a municipal level of government consisting of two classes of municipalities, charter cities and townships, equal in their relationship to each other and other levels of government.* Each class of municipality would have an executive and legisative branch of government.

This new framework of municipal government would *eliminate the intermediate form of government*, the village. Prior to the implementation of such a framework, the Governor and the Legislature are encouraged to take the necessary action to prohibit the incorporation of any additional villages under either the Home Rule Village Act or the General Law Village Act.

(b) All actions granting enabling authority to provide services and regulatory powers should be granted equally from the time the two class framework is instituted.

(c) Townships should be permitted to reorganize under the provisions of the Home Rule City Act without regard to the population and population density requirements, subject to voter approval of a proposed charter.

—*Id.* at 19. Emphasis added.

The Governor's Special Commission is not alone in recognizing the importance of local governmental representation and services such as townships can provide.

In the affairs of men, there always appears to be a need for at least two things simultaneously, which, on the face

of it, seem to be incompatible and to exclude one another. We always need both freedom and order. *We need the freedom of lots and lots of small, autonomous units*, and, at the same time, the orderliness of large-scale, possibly global, unity and coordination. *When it comes to action, we obviously need small units, because action is a highly personal affair, and one cannot be in touch with more than a very limited number of persons at any one time.* But when it comes to the world of ideas, to principles or to ethics, to the indivisibility of peace and also of ecology, we need to recognize the unity of mankind and base our actions upon this recognition. Or to put it differently, it is true that all men are brothers, but it is also true that in our active personal relationships we can, in fact, be brothers to only a few of them, and we are called upon to show more brotherliness to them than we could possibly show to the whole of mankind.

—E. F. Schumacher, *Small is Beautiful* at 65 (1973). Emphasis added.

B. DESCRIPTIVE STATISTICS OF MICHIGAN TOWNSHIPS

There are 16,991 "organized governments" in the United States which are termed "townships" by the 1972 Census of Governments.[4] The term "township" applies to a local unit of government which serves inhabitants of areas defined without regard to population concentration and is distinguished from cities which are created to serve specific population concentrations. Township governments are found in 21 states and, in 1970, served a population of 45,948,000. Townships have a wide range of different governmental powers.

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[4] *1972 Census of Governments, Vol. 1; Governmental Organization U.S. Department of Commerce* (1972).

The reports for the 1972 Census of Government cites Michigan as being one of six states in which townships possess broad governmental powers. Where they include densely populated areas, townships "*perform functions commonly associated with municipal governments.*"[5] (Emphasis added). There are currently 1,245 townships in Michigan,[6] serving a total population of 3,479,221.[7]

A comparative distribution of township governments in the United States and in Michigan, by population-size is summarized in Tables 2 and 3.

Table 2.

NUMBER OF UNITED STATES TOWNSHIPS WITHIN POPULATION CATEGORY.

POPULATION CATEGORY	NUMBER OF TOWNSHIPS
50,000 or more	94
25,000 to 49,999	185
10,000 to 24,999	621
5,000 to 9,999	816
2,500 to 4,999	1,454
1,000 to 2,499	3,575
Less than 1,000	10,246
Total U.S. Townships	16,991

—*1972 Census of Governments, Vol. 1, Supra,* at 3.

[5]
Id at 3.

[6]
Organization of Counties in Michigan, Registrations and Records Sections, Michigan Department of State, Lansing, Michigan (January, 1977).

[7]
The current population of Michigan townships, 3,479,221, is computed as the remainder of the Intercensal July 1, 1975 population of

Table 3.

NUMBER OF MICHIGAN TOWNSHIPS WITHIN POPULATION CATEGORY

POPULATION CATEGORY	NUMBER OF TOWNSHIPS
10,000 and over	52
Between 9,000 and 10,000	6
Between 8,000 and 9,000	10
Between 7,000 and 8,000	21
Between 6,000 and 7,000	4
Between 5,000 and 6,000	35
Between 4,000 and 5,000	32
Between 3,000 and 4,000	68
Between 2,000 and 3,000	172
Between 1,000 and 2,000	356
Under 1,000	489
Total Michigan Townships	1,245

—Joseph A. Parisi, *Manual for Township Government,* at 10, (1973). (According to 1970 Census).

The 1,245[8] townships in Michigan, serving 3,479,221[9] resi-

Michigan, 9,116,699 and total city population, 5,637,478. Intercensal population data is available between official censuses from *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Department of Commerce,* (May, 1977).

[8]
Organization of Counties in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan (January, 1977).
Directory of Michigan Township Officials 1977-1979; The Michigan Township Association, Lansing, Michigan (1977).

[9]
The current population of Michigan townships, 3,479,221 is computed as the remainder of the Intercensal 1 July 1975 population of Michigan, 9,116,699 and total city population 5,637,478.

dents result in an average township population of 2,795 residents.[10] Township governments in Michigan serve thirty-eight percent of Michigan's total population of 9,116,699.[11] Redford Township in metropolitan Wayne County is Michigan's most heavily populated township with a population of 71,901 in 1970[12]

By comparison, there are only 265 cities in Michigan.[13] The total population of Michigan cities as of 1975 is 5,637,478, with an average population of 21,274 per city.[14] City populations in Michigan range from a low of 452 in Omer to a high of 1,335,085 in Detroit.[15]

The estimated land area occupied by Michigan cities in

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[10]

The estimated land area of Michigan cities, 2,136 square miles, was computed by totalling the land area of the 183 cities with 2,500 or more inhabitants in 1970 as given in Table B-2 of *County and City Data Book; Bureau of the Census, U.S. Department of Commerce* (1972). The total land area for these 183 cities was determined to be 1,474.2 square miles for an average of 8.06 square miles per city. Applying the average 8.06 to the total 265 cities gives an estimated total land area of 2,136 square miles under city government in 1970 (See affidavit of Dr. Dennis Gilliland, Exhibit J).

[11]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from the Intercensal July 1, 1975 population of Michigan.

[12]

1970 Census of Population, Characteristics of the Population—Michigan Vol I, No. 24; Bureau of the Census, U.S. Department of Commerce (1971).

[13]

List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan (January, (1977).

[14]

Current Population Reports, Series P-25, No. 670; Bureau of the Census, U.S. Dept. of Commerce (May, 1977).

[15]

Id.

1970 was 2,136 square miles,[16] approximately 3.8 percent[17] of Michigan's total land area of 56,620[18] square miles. The remaining 96.2 percent of Michigan land, 54,484 square miles, is under township government.[19]

A small fraction of the land area under township government is under village government as well. Residents of villages are also considered residents of townships and receive services from *both forms* of local government. The difference between the relationship of city and village government to township government in Michigan can be dramatized by the following analogy:

Picture the entire state as divided up into townships with the cities removed by a cookie cutter and the villages superimposed on the townships as though they are postage stamps.

Most townships are approximately six miles square, but some are eight times that size. Royal Oak Township in metropolitan

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[16]

The estimated land area of Michigan cities, 2,136 square miles, was computed by totalling the land area of the 183 cities with 2,500 or more inhabitants in 1970 as given in Table B-2 of *County and City Data Book; Bureau of the Census, U.S. Department of Commerce* (1972). The total land area for these 183 cities was determined to be 1,474.2 square miles for an average of 8.06 square miles per city. Applying the average 8.06 to the total 265 cities gives an estimated total land area of 2,136 square miles under city government in 1970 (see affidavit of Dr. Dennis Gilliland, Exhibit J).

[17]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from footnotes 16 and 18.

[18]

Michigan Manual 1977-1978; Department of Management and Budget, State of Michigan, Lansing, Michigan (1977).

[19]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from footnotes 16 and 18.

Oakland County is the state's smallest township geographically, encompassing only six-tenths of a square mile. Yet, with 6,000 residents, it is also Michigan's most densely populated township.[20] Among Michigan cities with a population of 2,500 or more residents, city land areas ranged from .5 square miles (Keego Harbor and Pleasant Ridge) to 138.0 square miles (Detroit).[21]

The land area under the jurisdiction of townships has become increasingly valuable as shown by the state equalized valuations (SEV) of land in Table 4.

Table 4 indicates that the State Equalized Valuation of the total land area under township government in Michigan has steadily increased. This marked increase in township State

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[20]

Joseph A. Parisi, *A Manual for Township Government*, at 3, (1973).

[21]

County and City Data Book; Bureau of the Census, U.S. Department of Commerce (1972).

[22]

This tabulation is derived from *Lists of County, City, Village and Township State Equalized Valuations; State Tax Commission, Michigan Department of Treasury; Lansing, Michigan* (1970-1976).

[23]

The City totals for 1974 and 1976 include State Equalized Valuations for seven cities incorporated between 1970 and 1974, and are not included in the 1970 city total.

[24]

Section 211.9(c) of Michigan Compiled Laws; MCLA 211.9; MSA 7.9 changes the method in 1976 by which the State Equalized Valuation is determined.

[25]

The Township totals include the State Equalized Valuations of the villages they contain since townships and villages both have jurisdiction of overlapping land areas. The village contribution was $911,325,182 in 1970, $1,258,173,757 in 1974, $1,403,173,193 in 1975 and $1,372,455,435 in 1976.

TABLE 4.

STATE EQUALIZED VALUATIONS
(IN DOLLARS AND PERCENT)[22]

Class of Government	1970	1974[23]	1975	1976[24]
Township[25]	13,660,391,466 (35.4)	20,472,509,272 (39.5)	23,029,823,390 (40.5)	24,076,713,120 (43.4)
Cities (except Detroit)	19,584,921,823 (50.8)	25,629,074,188 (49.4)	27,987,315,830 (49.3)	26,351,379,959 (47.5)
Detroit	5,306,284,180 (13.8)	5,769,745,190 (11.1)	5,803,963,340 (10.2)	5,050,841,680 (9.1)
TOTAL	38,551,597,469 (100.0)	51,871,328,650 (100.0)	56,821,102,560 (100.0)	55,478,934,759 (100.0)

Equalized Valuation sharply contrasts with the decrease of the State Equalized Valuation of the total land area under city governments.

The total 1976 State Equalized Valuation for Michigan's 1,245 townships was $24,076,713,120 for an average of $19,338,725 per township. The low was $879,823 (Grim Township of Gladwin County) and the high was $414,385,475 (Redford Township in Metropolitan Wayne County).

The total State Equalized Valuation for the 265 cities in Michigan was $31,402,221,639, including $5,050,841,680 from Detroit. The low city State Equalization Valuation was $859,050 (Gaastra). The average State Equalization Valuation for all cities (excluding Detroit), was $99,815,833. The frequency distribution of 1976 State Equalization Valuations is shown in Table 5.

Table 5.

FREQUENCY AND PERCENTAGE DISTRIBUTION OF STATE EQUALIZED VALUATIONS IN 1976

Millions of Dollars of State Equalized Valuations	Townships		Cities	
	Number	%	Number	%
0 — 10	624	50.1	58	21.9
10 — 50	535	43.0	112	42.3
50 — 100	47	3.8	28	10.6
over 100	39	3.1	67	25.3
Total	1,245	100.0	265	100.0

C. GROWTH OF TOWNSHIP POPULATION

The number of townships in the United States has shown a small decrease from 1967 to 1972—from 17,105 townships to 16,991.[26] In Michigan, the 1,248 townships[27] in existence in 1970 have decreased to 1,245[28] as three townships have incorporated as cities.

A township can also lose its status as a township if an adjacent city annexes it in its entirety. For example, in the case at bar, the City of Novi filed one annexation resolution for seven parcels of township land with a total of less than 100 residents. The city subsequently filed another resolution seeking annexation of the remainder of the Novi Township.

While the number of townships has decreased, the population of townships has increased. Table 6 compares the population and percentage of the total Michigan population of townships and cities in Michigan from 1960 to the present.

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[26]

1972 Census of Governments, Volume 1, Governmental Organization, U.S. Department of Commerce (1972).

[27]

1972 Census of Governments, Volume 4, Finances of Municipalities and Township Governments, Number 4, U.S. Department of Commerce, at 147 (1972).

[28]

Organization of Counties in Michigan; Registrations and Records Section, Michigan Department of State; Lansing, Michigan, (January, 1977).

Directory of Michigan Township Officials, 1977-1979; The Michigan Townships Association; Lansing, Michigan (1977).

Table 6.

COMPARATIVE POPULATION OF MICHIGAN TOWNSHIPS AND CITIES

Class	1960[29]	1970[30]	1975[31]
Townships	2,956,128 (37.8%)	3,252,577 (36.6%)	3,479,221 (38.2%)
Cities	4,867,066 (62.2%)	5,629,249[32] (63.4%)	5,637,478[33] (61.8%)
TOTAL	7,823,194 (100%)	8,881,826 (100%)	9,116,699 (100%)

[29]

Michigan had 218 incorporated cities by 1960; *List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan* (January, 1977).

[30]

Michigan had 258 incorporated cities by January 1, 1970; *List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State; Lansing, Michigan* (January, 1977).

[31]

The estimates for the July 1, 1975, population are from *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Department of Commerce,* (May, 1977). Cities incorporated as of 1975 totalled 265.

[32]

The total 5,629,249 includes 40 cities not in existence in 1960. These 40 cities contributed 540,919 to the 1970 population of cities which was 6.1% of the state's total 1970 population. The 218 cities incorporated by 1960 had 62.2% of the state population in 1960 and only 57.3% of the state population in 1970.

[33]

The total 5,637,478 also reflects an increase due to seven incorporations between 1970 and 1975. The population of these seven areas which incorporated is thus included in the population of cities in 1975 and is not included in the population of townships in 1975.

Table 6 indicates an increase in the population percentage of Michigan cities from 1960-1970, with a corresponding decline in township population percentage. The population percentage increase in cities, however, was not due to a migration of township residents into cities, but rather reflects the forty townships which incorporated into cities between 1960-1970.[34] The population of the forty townships incorporating into cities was 540,919, representing 6.1% of the 1970 total population.[35] If the population of the newly incorporated cities is excluded from the 1970 population for cities, the cities' share of the state's 1970 population decreased from 1960, rather than increased, from 62.2% to 57.2%. The incorporation of seven township areas to city status from 1970 to 1975 helped minimize the total population loss incurred by Michigan cities.[36]

Despite the forty-seven township areas which incorporated into cities during 1960-1975, Table 6 shows that the total population of Michigan townships *climbed* by 523,093. The population growth rate of Michigan townships has exceeded the growth of the state's cities.

Townships and the township form of government continue to play an important role in Michigan as township population rises.

[34]

Calculated by Dr. Dennis Gilliland (see affidavit Exhibit J) from *List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State, Lansing, Michigan* (January, 1978.)

[35]

List of Incorporated Cities in Michigan; Registrations and Records Section, Michigan Department of State; Lansing, Michigan (January, 1978).

[36]

Interpretation of *List of Incorporated Cities in Michigan; Registrations and Records Section, Department of State; Lansing, Michigan* (January, 1978).

> Now, it is quite true that today there are more large organizations and probably also bigger organizations than ever before in history; but the number of small units is also growing and certainly not declining in countries like Britain and the United States, and many of these small units are highly prosperous and provide society with most of the really fruitful new developments.
>
> —E. F. Schumacher, *Small is Beautiful* at 64 (1973).

The population growth of both cities and townships goes hand in hand with a need for land. The need for expansion can be efficiently met only by proper utilization and conservation of available land. This necessitates planning and land control that balances ecological and sociological considerations of an area with the needs of both cities and townships and their residents. Section 9 of the Home Rule Cities Act permits cities to increase their size and tax base at the expense of adjacent townships by drawing the boundaries of township areas proposed for annexation so as to include 100-or-less residents, thereby denying township residents a referendum vote on the proposed annexation. Appellants submit that the Section 9 provision, by allowing cities to deny townships residents the referendum vote, also denies township residents expression of the township's needs and plans for expansion or utilization of land.

D. THE LEGAL POWERS OF MICHIGAN TOWNSHIPS

Township government in Michigan has been delegated by the legislature and the Michigan Constitution all of the powers and authority of local government customarily attributable to cities and other municipal corporations throughout the country. The Michigan Constitution provides that constitutional provisions and laws shall be *liberally construed in the township's favor* and that powers granted to townships include both express and *implied powers:*

> The provisions of this constitution and law concerning counties, *townships,* cities, and villages *shall be liberally construed in their favor.* Power granted to counties and *townships* by this constitution and by law shall include those fairly *implied* and not prohibited by this constitution.
>
> —Const. 1963, Art. 7, §34. Emphasis added.

The intention of the delegates to the Michigan Constitutional Convention of 1961, in adopting this provision, is apparent from the record of the proceedings. Delegate Elliot, the Chairman of the Committee on Local Government, gave the following reasons for the language proposed for Article 7, Section 34:

> Much testimony before the committee on local government, together with the experience reported by many of the committee members, has indicated that a major problem in Michigan local government today relates to narrow court construction or interpretation of the statutory powers of counties and townships. This practice, which is traditional with the courts, results in great problems in the drafting of legislation and increases the length of statutes since even minor omissions from them may result in a lack of power wanted or needed by a county or township.
>
> The intent of this section is to mandate the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments. It is the understanding of the committee that home rule cities and villages already enjoy a broad construction of their powers and it is not the intention of the committee

to make this construction any less broad. *The principal problem seems to rest with the powers of counties and townships, so the second sentence of this section proposes specifically to broaden their powers and seeks to give the courts some guidance as to the criteria to be used in interpreting the constitution and statutes relative to counties and townships.*

—*State of Michigan Constitutional Convention 1961 Official Record* at 1048. Emphasis added.

Delegate Ford, who introduced the proposal, explained his intention as follows:

It is our intention to come up with a set of rules to play baseball in the supreme court so that you play it with the same rules, whether you come from a township with a township matter or a county with a county matter, or you come from a city. This is all we are trying to do. We are not trying to give one preference over another. We are trying to get a *uniform approach to the interpretation of statutes conferring powers on units of local government.*

—*Id.* at 1050-51. Emphasis added.

Delegate Brake explained the need for the second sentence of Article 7, §34 as follows:

[W]e thought that second sentence was necessary. You will notice in the first sentence it mentions the "cities, villages, counties and townships." *What we have tried to do in the second sentence was to put the township and the counties—they only are mentioned in that sentence—on the same footing as your home rule cities and villages already are.* It is our understanding of the law that anything "fairly implied" in the grants of power to cities and

villages is included in their powers and they may exercise those powers. That is not true as to townships and counties. *We tried by this proposal to put them on the same basis.*

—*Id.* at 2537. Emphasis added.

The Convention's Address to the People contained the following explanation of §34:

This is a new section intended to direct the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments. Home rule cities and villages already enjoy a broad construction of their powers *and it is the intention here to extend to counties and townships within the powers granted to them equivalent latitude in the interpretation of the constitution and statutes.*

—*Id.* at 76. Emphasis added.

Thus, the proceedings of the Michigan Constitutional Convention of 1961 demonstrate the delegates' intention in adopting §34 as an attempt to broaden judicial construction of the statutory powers of townships and in so doing, place townships on an equal footing with cities.

Although the enumeration of statutory authority granted to townships is almost limitless, the following is representative of such authority:

1. Section 17 of Art 7 of the Michigan Constitution provides that each organized township shall be a *body corporate* with powers and immunities provided by law.

2. Section 18 of Art 7 of the Michigan Constitution provides for the *election* for terms of not less than two

nor more than four years of a supervisor, clerk, treasurer and not to exceed four trustees in each organized township with *legislative and administrative powers and duties* provided by law.

3. Section 34 of Art 7 of said Constitution grants to townships *implied powers* in addition to those expressly granted.

4. Under MCLA 41.181; MSA 5.45(1), a township is granted *broad legislative powers to adopt ordinances* "regulating the public health, safety and general welfare of persons and property, fire protection, the licensing or use of bicycles, traffic and parking of vehicles, sidewalk maintenance and repairs, and licensing of business establishments, the licensing and regulating of hawkers, vendors, peddlers, solicitors, circuses, carnivals and public improvements and provides penalties for the violation thereof . . ." This act also authorizes the township to employ and establish a *police department* with full power to enforce state laws along with such ordinances.

5. MCLA 41.801 *et seq.;* MSA 5.2640(1) *et seq.*, and MCLA 41.851 *et seq;* MSA 5.2640(31) *et seq.*, provides authority for a township to establish a *fire department and police department* and to assess township-wide for each of said operations up to 10 mills for capital improvements and equipment and an unlimited amount for operating purposes.

6. MCLA 41.721 *et seq.;* MSA 5.2770(5) *et seq.*, authorizes a township through *special assessments*, to construct *public improvements* such as storm and sanitary sewers, water mains, public highways, sidewalks, parks, elevated structures for foot travel, garbage and rubbish collection, bicycle paths, erosion control structures, or

dikes. The utility services may also be funded by *taxation*, rates and charges for the service and connection charges under MCLA 46.171 *et seq.;* MSA 5.2767(1) *et seq.;* MCLA 123.731 *et seq.;* MSA 5.570(1) *et seq.;* and MCLA 141.101 *et seq.;* MSA 5.2731 *et seq.*

7. Townships may provide *street lighting* under MCLA 41.251 *et seq.;* MSA 5.2481 *et seq.*, by use of general fund moneys or special assessment moneys which may be township-wide.

8. A township may engage in *land use planning* under MCLA 125.321 *et seq.;* MSA 5.2963(101) *et seq.*, and may further regulate the use of land within its jurisdiction by *zoning ordinances* and regulations under MCLA 125.271 *et seq.;* MSA 5.2963(1) *et seq.* If a county also has a zoning ordinance affecting lands within a township, *the township zoning ordinance shall supersede the county ordinance* and the county ordinance shall have no force or effect. MCLA 125.297; MSA 5.2963(27).

9. MCLA 125.1509; MSA 5.2949(9) authorizes a township to adopt and enforce *building regulations* for construction within its jurisdiction which supersedes any *county authority* where the township elects to so proceed.

10. Townships adopt their own budgets and control their fiscal year operations under MCLA 141.411 *et seq.;* MSA 5.3228(1) *et seq.*

11. Under MCLA 41.2; MSA 5.2, a township is a *corporate body* which may *sue and be sued*; may appoint all necessary agents and attorneys in that behalf; has the power to purchase and hold real and personal estate for the public use of the inhabitants and to convey, alienate

and dispose of the same and to make all contracts that may be necessary and convenient for the exercise of its corporate powers.

12. In addition to what has previously been cited with regard to powers of taxation for certain utility projects, townships have *general taxation authority* under the Michigan Constitution, Const. 1963, Art. 9, §6 and MCLA 211.201 *et seq.*; MSA 7.61 *et seq.*, and MCLA 41.3; MSA 5.3. It is interesting to note that under MCLA 211.202; MSA 7.62, the term "local unit" specifically includes townships along with counties, villages, cities, and school districts. Aggregate millage may be increased up to 50 mills on each dollar of valuation.

13. All of the public improvement acts cited above, as well as MCLA 131.2, *et seq;* MSA 5.3188(1), *et seq.*, authorize townships to *issue municipal bonds* for the purpose of borrowing money to initially fund such improvements.

14. Townships may acquire, *operate and maintain* parks and places of recreation under MCLA 41.421 *et seq.;* MSA 5.2441 *et seq.*, and MCLA 123.51 *et seq.;* MSA 5.2421 *et seq.*

15. The township board is a *board of health* under MCLA 327.1; MSA 14.61 with authority in subsequent section to make rules and regulations respecting nuisances, causes of sickness, etc., within the township and provide penalties for any violations thereof. Said board also is required to own, operate and maintain a *cemetery* for the use of the inhabitants of the township.

16. The supervisor of the township is the assessing officer in *charge of assessing* all real and personal taxable

property within the township for use by all taxing units such as the county and school districts under MCLA 41.61; MSA 5.52.

17. The township treasurer, under MCLA 211.44; MSA 7.87, has the duty and obligation of collecting all county, school and township taxes assessed against real and personal property within the township. The treasurer is further charged with the duty of receiving and accounting for all township funds which are then subject to annual or semi-annual audit by the Auditor of the State of Michigan.

18. Under Michigan Election Law, MCLA 168.1 *et seq.;* MSA 6.1001 *et seq.*, the township clerk is in charge of the registration of qualified electors for all voting purposes within the township and the noticing and conducting of all state, local and federal elections within said township.

19. It is difficult to perceive of any governmental function normally attributable to local municipalities that is not authorized to be performed by Michigan townships.

20. The primary distinction which does exist between cities and townships is in millage limitations. Charter township boards may, by resolution, levy up to 5 mills without a vote of the electorate. This limitation may be raised to 10 mills with approval of the electorate. A general law township is limited to 1 mill without a vote. The maximum city charter limitation is 20 mills.

E. THE TOWNSHIP FORM OF GOVERNMENT IN MICHIGAN

Michigan townships are governed by a township board, composed of the supervisor, the clerk, the treasurer, and either two or four trustees, depending upon population or the number of registered voters. Candidates for township office must declare themselves members of a political party as elections are partisan. Officials are elected on an at-large basis.

The township supervisor acts as the chief administrative and executive officer. The board may exercise a wide range of appointments of officers, agents, employees and board members including the following: zoning board, planning commission, urban planner, fire and police administration, building inspector, clerical employees, nurse, traffic officers, attorney, engineer, auditors and assessors. This enables a township board to hire professionals for experienced and efficient operation of township government. Kenneth VerBurg, *A Study of the Legal Powers of Michigan Local Governments*, at 1-2 (1969).

Townships are a representative form of government. Their responsibility to the people is delineated and fixed in that they may act only as permitted by the constitution and statutes of Michigan or by interpretation of the common law by the Michigan Supreme Court.

A breakdown of Michigan township government finances is included as Exhibit O. The table shows that Michigan townships in 1970 had a total general revenue of $156,602,000, a total general expenditure of $119,778,000, a total utility revenue of $14,775,000, a total utility expenditure of $18,105,000, and a total outstanding end of year debt of $186,593,000. The largest total township expenditures are allotted to the following services:

highways — $19,558,000; utilities — $18,105,000; fire protection — $12,232,000; and police protection — $10,925,000

F. SERVICES PROVIDED BY TOWNSHIPS

Services provided to residents by Michigan Townships include utilities such as water supply and sewerage disposal (MCLA 41.721 *et seq.*; MSA 5.2770[51] *et seq.*), fire and police protection (MCLA 41.801 *et seq.*; MSA 5.2640[1] *et seq.*, and MCLA 41.851 *et seq.*; MSA 5.2640[31] *et seq.*, parks and recreation (MCLA 41.421 *et seq.*; MSA 5.2441 *et seq.* and MCLA 123.51 *et seq.*; MSA 5.2421 *et seq.*), maintenance of parking lots and sidewalks (MCLA 41.181; MSA 5.45[1]), street lights (MCLA 41.251 *et seq.*; MSA 5.2481 *et seq.*) and cemeteries (MCLA 128.151 *et seq.*; MSA 8.141 *et seq.*), health (MCLA 327.1 *et seq.*; MSA 14.61 *et seq.*), safety, (MCLA 256.562; MSA 9.1705), and sanitation services (MCLA 338.1301 *et seq.*; MSA 14.425[1] *et seq.*). Townships may engage in environmental protection and control (MCLA 691.1201 *et seq.*; MSA 14.528[201] *et seq.* and MCLA 752.906; MSA 28.603[6]), irrigation and drainage (MCLA 280.1 *et seq.*; MSA 11.1001 *et seq.*), soil conservation (MCLA 281.621 *et seq.*; MSA 13.1821 *et seq.*), management of inland lakes and streams (MCLA 281.951 *et seq.*; MSA 11.475[1] *et seq.*), construction and maintenance of public wharves, piers, docks and landing places (MCLA 41.481 *et seq.*; MSA 5.2391 *et seq.*). As a result of statutes granting local governments the right to engage in joint action with each other, townships have become increasingly involved in mass transit authorities (MCLA 124.401 *et seq.*; MSA 5.3475[101] *et seq.*) in suburban areas, and in the establishment and maintenance of hospitals (MCLA 331.1 *et seq.*; MSA 5.2456[1] *et seq.*) and libraries (MCLA 41.241 *et seq.*; MSA 5.2371 *et seq.*).

G. STATISTICAL DATA ON ANNEXATION OF TOWNSHIP LAND BY CITIES IN MICHIGAN

A comprehensive list of resolutions by cities seeking annexation of adjacent township area(s) which were filed with the State Boundary Commission from 1972 to the present is included as Exhibit K in the Appendix. The table shows the number of registered voters, and the population of each city and township affected by the proposed annexation. THESE FIGURES REPRESENT THE NUMBER OF VOTERS AND RESIDENTS WHO ARE DENIED EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY THE ARBITRARY "100-OR-LESS" CLASSIFICATION. Exhibit K also shows the areas proposed for annexation which contain more, or less, than 100 residents, which determines whether the proposed annexation of township area by a city will or will not be subject to a referendum vote.

The date from the comprehensive table when tabulated in a different form, shows that a large number of annexation proposals by city councils to annex township areas have been initiated since 1971, the effective date of the challenged statute's "loophole" provision.

Table 7 lists the frequency of proposed annexations by cities of township areas per year since 1971.

Table 7 indicates that city councils have filed twenty-three (23) annexation resolutions from January 1, 1978 to February 15, 1978. An additional eleven (11) annexation resolutions were filed by city councils on February 17, 1978, for a total of thirty-four (34) annexation resolutions. This compares with a total of twenty-two (22) city council annexation resolutions filed in the entire year of 1977.

Table 7.

FREQUENCY OF RESOLUTION FILINGS[37]

YEAR OF FILING	ANNEXATION RESOLUTIONS BY CITIES
71	35
72	27
73	23
74	13
75	10
76	25
77	22
78 (as of 2/15/78)	23
TOTAL	178[38]

Of the twenty-two (22) annexation resolutions filed by city councils in 1977, only three (3) were filed prior to the Michigan Supreme Court Decision herein appealed. Nineteen (19) annexation resolutions were filed after October 24, 1977, the date of the Michigan Supreme Court decision. *Thus, fifty-three (53) annexation resolutions have been filed by city councils since the Michigan Supreme Court's decision.*

In an attempt to annex all or at least most of the shopping malls and shopping centers in township areas adjacent to the City of Flint, the City of Flint has filed twenty-two (22) resolutions for township annexations with the State Boundary Com-

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[37]

Tabulated from *Dockets of Filings, Michigan State Boundary Commission* (1971—February 15, 1978) by Dr. Dennis Gilliland (see Affidavit Exhibit J).

[38]

An additional eleven (11) annexation resolutions by city councils were filed with the State Boundary Commission on February 17, 1978. This information was received too late to be included in this table.

mission in 1978. The challenged provision of the Michigan Home Rule Cities Act encourages "land grabs" of this sort by cities on adjacent townships.

Table 8 shows the rate among resolutions for annexation by cities of adjacent township areas filed with the Michigan State Boundary Commission which are for annexation of township areas with 100 or less residents for January 1, 1977—February 15, 1978. By seeking to annex a township area with 100 or less residents, a city may proceed with annexation without a referendum vote by the residents in the township area proposed for annexation.

The high rate of annexation resolutions filed by cities which involve township areas with 100-or-less residents, indicates that cities are intentionally drawing the boundaries of proposed annexation areas to exclude residents and to insure that there will be no referendum vote if the State Boundary Commission approves a township's annexation area as proposed by a city.

A resolution for annexation of an adjacent township area by a city is examined by the State Boundary Commission to determine if the resolution is "legally sufficient," by satisfying certain minimum legal standards. The State Boundary Commission only rules on annexation resolutions which are legally sufficient.

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[39]

The figures are provided by the Michigan Department of Treasury, Bureau of Local Government Services, State Boundary Commission, Mr. Robert Terry, Criteria Analyst, and represent, as of February 15, 1978, an estimate of the populations of the township areas proposed for annexation by cities. When an annexation proposal reaches the final decision stage of APPROVAL-DENIAL by the State Boundary Commission, a population figure is determined.

Table 8.

RESOLUTIONS FILED BY CITIES SEEKING ANNEXATION OF ADJACENT TOWNSHIP AREAS WITH 100 OR LESS RESIDENTS[39]

YEAR OF FILING	100 OR LESS RESIDENTS IN PROPOSED ANNEXATION AREAS; NO REFERENDUM VOTE UNDER SECTION 9, MICHIGAN HOME RULE CITIES ACT	MORE THAN 100 RESIDENTS IN PROPOSED ANNEXATION AREA; REFERENDUM VOTE	RATIO 100-OR-LESS TOTAL
1977	16	6	16/22 (72.7%)
1978	23	0	23/23 (100.0%)
TOTAL	39	6	39/45 86.7%)

More extensive data is available for "legally sufficient" resolutions than is available for resolutions which are eliminated at an early stage due to error in the form or execution of the resolution itself.

Table 9 shows the frequency tabulation of the percentage (%) of a township's State Equalized Valuation (S.E.V.) for township areas sought to be annexed by cities in annexation filings from January 1, 1972 through July, 1977.

Table 9.

FREQUENCY TABULATION BY PERCENTAGE (%) OF TOWNSHIP STATE EQUALIZED VALUATION FOR TOWNSHIP AREA SOUGHT TO BE ANNEXED BY CITIES[40]

CLASS (Percentage of Township SEV in Annexation Area)	Number of Resolutions by Cities for Annexation of an Adjacent Township Area	%
Under 1%	15	28.3
1%—Under 10%	23	43.4
10%—Under 50%	11	20.8
50%—Under 100%	2	3.8
100%	2	3.8
TOTAL	53	100.0

[40]

Derived by Dr. Dennis Gilliland (See affidavit Exhibit J) from data available, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission*, by Robert W. Terry, Criteria Analyst, Michigan State Boundary Commission (July, 1977). Data on the township state equalized valuations is only available for those annexation resolutions that the State Boundary Commission has found to be legally sufficient.

Annexation efforts by cities of adjacent township areas frequently have a significant impact on the township from which land is sought to be annexed. Table 9 shows that *28.3% of proposed annexations by city councils were for township areas representing 10% or more of a township's State Equalized Valuations*. These figures show that in only too many cases, city councils are attempting to annex valuable parcels of township land.

H. IMMEDIATE, IRREPARABLE AND SUBSTANTIAL HARM WILL RESULT TO TOWNSHIPS AND TOWNSHIP RESIDENTS UNLESS THE OPINION OF THE MICHIGAN SUPREME COURT IS REVERSED.

Violation of the Equal Protection guarantee of the Fourteenth Amendment of the United States Constitution under the annexation provisions of the Michigan Home Rules Cities Act is a substantial federal question due to the sheer numbers of voters residing in Michigan townships. Three million, four hundred seventy-nine thousand, two hundred twenty-one (3,479,221)[41] township residents are denied Equal Protection of the law by an arbitrary classification which grants the right to vote in annexation matters to some voters and denies that right to other equally interested voters.

The importance of the township form of government in Michigan is evident. It is an effective and economical means of providing over one-third of all Michigan residents with a

[41]

The current population of Michigan townships, 3,479,221, is computed as the remainder of the Intercensal July 1, 1975 population of Michigan, 9,116,699 and total city population, 5,637,478. Intercensal population data is available between official censuses from *Current Population Reports, Series P-25, No. 670, Bureau of the Census, U.S. Department of Commerce*, (May, 1977).

wide range of services and local representation. Yet, as a result of the "loophole" provision of Section 9 of the Michigan Home Rule Cities Act, the township form of government stands to suffer immediate and irreparable harm. Enactment of that provision has opened Pandora's Box. Once cities became aware of the "loophole," city proposals for annexation of valuable township land have been gerrymandered so that the proposed annexation area has 100-or-less residents. The purpose of a city's gerrymander is blatantly clear — circumvention of a referendum vote by township residents in the proposed annexation area. The city avoids a referendum vote, acquires the township land and bolsters its tax base. The township residents are denied their fundamental right to vote, the township loses part of its tax base and some of its residents.

The few exceptions are cases where a city, having already annexed the bulk of a township's tax base, magnanimously annexes the remainder of the township residential areas with a small tax base.

The challenged legislation enables and encourages cities to increase their own tax bases and insure their own future expansion at the expense of townships. This inequality, which favors cities over townships, cannot be justified by differences in governmental powers or services because the state legislature has delegated authority to Michigan townships to provide services virtually identical to those of cities.

Cities view annexation as a solution to dwindling tax bases resulting from changing patterns of population growth. The needs and Constitutional rights of township residents should not be casually discarded in favor of an expedient approach for cities to deal with their fiscal problems.

The "loophole" provision has inadvertently given control of the annexation process to city councils by allowing them to

gerrymander the boundaries of township areas proposed for annexation so that in most cases the township areas contain 100-or-less residents and township voters are consequently denied the right to a referendum vote on annexation measures. The "loophole" provision enables cities to annex entire townships piece by piece, and circumvent the legislative intent to grant a referendum vote on annexation measures. *It is unlawful to do indirectly what cannot be done directly.* The "loophole" provision permits cities to do just that. Cities can avoid an annexation referendum vote on proposed annexation for a township area which contains more than 100 residents, merely by dividing the desired area into portions and annexing the portions separately.

A referendum vote on annexation issues gives township residents an opportunity to express their preference. This right of expression is more than a choice between a city and a township form of government or a desire for economical services. The sociological makeup of an area may include a separate township regional identity and shared concerns among the township residents. By denying township residents a referendum vote, a city seeking annexation denies those residents expression of ther sentiments. For instance, one alternative to a township's annexation by a city is incorporation of the township as a separate city. This allows the township to preserve its regional identity. In some situations, the "loophole" provision has forced townships into premature incorporation in order to avoid annexation.

The issues before this Court are not intended to pit cities against townships. The residents and the government of cities and townships all have an interest in annexation questions. Annexation often involves valuable township land which increases the tax base of the annexing city but decreases the tax base of the township from which the land has been annexed. This results in lower taxes for city residents and higher

taxes for township residents. Annexation has economic as well as sociological effects on the residents of the township *and* the city involved in an annexation question. Proposed annexations should be determined on the basis of the needs of all the interested parties, including the residents of the city, the township and the township area proposed for annexation. The "loophole" provision fails in this respect.

Initiation of an annexation proposal is done by the city council, a representative body of all the people in the city. There is no corresponding right under the statute for all the people in the township to act through *its* own representative body, the township board. Townships are also denied the annexation option available to cities. Townships may not annex a portion of a city which meets the township's needs.

An unequal voice, and denial of the fundamental right to vote on annexation measures results in immediate, irreparable and substantial harm to township residents. Township residents are denied Equal Protection of the law in violation of the Fourteenth Amendment to the United States Constitution, suffer economic loss due to increased taxes in their township, and are denied the opportunity to express their preference for their form of local government.

The challenged legislation, Michigan Home Rule Cities Act, MCLA 117.9; MSA 5.2088, causes immediate, irreparable and substantial harm to the township form of government. Townships are losing significant amounts of their tax bases as a result of resolutions by cities for annexation of adjacent township land. City annexation resolutions are gerrymandered to insure that 100-or-less township residents live in the township area proposed for annexation, precluding a referendum vote on the proposed annexation.

The inequities in annexation procedures and standards under the statute will continue to cause irreparable harm to the whole township form of government by allowing cities to eat away at the economic base of townships. Townships are in danger of becoming a form of government inferior to cities as cities continue to annex wealthy areas, leaving only poverty-stricken areas to the township.

The ensuing harm to townships and their residents is *immediate*. Eighty-four resolutions by cities seeking to annex part of an adjacent township are currently pending before the Michigan State Boundary Commission.

Seventy-four (74) out of the eighty-four (84) resolutions that are currently pending have been filed since January 1, 1976. Fifty-three (53) of the pending resolutions were filed after October 24, 1977, the date the Michigan Supreme Court decision herein appealed from. It can be anticipated that many more resolutions will be filed in the near future. Any of these resolutions approved by the State Boundary Commission, if the area proposed for annexation contains 100 or less residents, will result in *all* the residents of the townships and cities being denied an equal right to a referendum on the proposed annexation.[42]

The ensuing harm is irreparable. There is no procedure, legislative or otherwise, by which a township may recover land lost to a city through the annexation process. The ensuing harm is substantial. Numerous annexation resolutions are pend-

---

[42]

Tabulated by Dr. Dennis Gilliland from Robert W. Terry, Criteria Analyst, State Boundary Commission, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977) and *Dockets of Filings, Michigan State Boundary Commission* (1971–February 17, 1978). (See affidavit Exhibit J).

ing, the township land proposed for annexation is valuable, the township are losing *significant percentages* of their tax base, and three million, four hundred seventy-nine thousand, two hundred twenty-one (3,479,221)[43] township residents are being denied Equal Protection of the law by the Home Rule Cities Act which grants a referendum vote on some proposed annexations, but denies a referendum vote on other proposed annexations based upon the irrational 100-or-less population classification.

VI. CONCLUSION

The right to vote has long been deemed by this Court to be a fundamental right. Any attempt by a state to restrict that right has been subjected by this Court to the strict scrutiny test. Such legislation has only been upheld where a compelling state interest has been shown to justify such a restriction.

This Court's position has been enunciated in voting cases involving legislative reapportionment; the poll tax as a prerequisite for voting; denial of the right to vote in school board and municipal bond elections; and the imposition of excessive durational residence requirements.

In upholding the Michigan Home Rule Cities Act (MCLA 117.9; MSA 5.2088), which permits voters in certain areas to vote in annexation elections while denying that right to other registered voters, the Supreme Court of Michigan *refused* to

---

[43]

The current population of Michigan townships, 3,479,221, is computed as the remainder of the Intercensal July 1, 1975 population of Michigan, 9,116,699 and total city population, 5,637,478. Intercensal population data is available between official censuses from *Current Population Reports, Series P-25, No. 670*, Bureau of the Census, U.S. Department of Commerce, May, 1977.

strictly scrutinize the challenged statute, and neglected to identify a compelling state interest to justify invading the constitutional guarantee of Equal Protection, as afforded to all citizens by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The classification upheld by the Michigan Supreme Court is *not* reasonable in relation to the nature of the legislation. The result of upholding the statute is that the right to a referendum vote is denied electors residing in the township and city if there are 100-or-less residents in the township area proposed for annexation, while city and township residents have a right to a referendum vote if the township area proposed for annexation contains more than 100 residents.

The Michigan statute also treats residents of two cities differently than residents of a township and a city when annexation is sought. Residents of two cities are granted a vote on proposed annexation measures involving annexation by one city of part of a second city, regardless of population, but the statute arbitrarily denies a vote to township residents and city residents on proposed annexation measures involving annexation by a city of a township area with 100-or-less residents. These disqualifications violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

THE STATE HAS A LEGITIMATE INTEREST IN ESTABLISHING VOTER QUALIFICATIONS, *BUT ONCE THE VOTING FRANCHISE IS GRANTED TO SOME, IT MAY NOT BE RESTRICTED OR DENIED TO OTHERS BY A STATE IN A MANNER WHICH VIOLATES THE EQUAL PROTECTION GUARANTEE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.*

The questions presented by this appeal are substantial and of public importance. The judgment of the Michigan Supreme Court jeopardizes the fundamental right possessed by all electors, and places a premium on the right to vote by establishment of an arbitrary population figure for annexations by a city of an adjacent township area.

Accordingly, appellants pray that this Court grant this appeal and reverse the judgment of the Michigan Supreme Court, thereby permitting all citizens who are registered electors in cities and townships to participate in the process of determining whether a requested annexation will garner the necessary approval of all the affected governmental entities.

In the alternative, appellants pray that this Court remand this matter to the Michigan Supreme Court based on the three errors of the Michigan Court: namely, that it over-extended the application of dicta in *Hunter,* decided in 1907, without any authority; secondly that it did not consider *Gomillion,* decided in 1967, which substantially limited *Hunter;* and thirdly, that it did not consider *Lockport,* decided in 1977, which supports the position of Appellants.

Respectfully submitted,

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TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

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TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN,

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MICHIGAN STATE BOUNDARY COMMISSION,

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Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

Supreme Court, U. S.
FILED
MAR 15 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v.

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal From the Supreme Court of Michigan

APPENDIX TO JURISDICTIONAL STATEMENT

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March, 1978

(Continued on inside cover)

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TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON,

Appellants,

v

MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland,

and

CITY OF MIDLAND, a municipal corporation,

Appellees.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

Appellee,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

(Continued on inside back cover)

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EXHIBIT A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF INGHAM

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan, and ROBERT B. CHATTERTON, Plaintiffs, vs. MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF MIDLAND, Intervening Defendant.	Docket No. 14598-C

OPINION OF THE COURT

This matter is submitted to the Court on briefs and after oral argument on Plaintiffs' motion for summary judgment. In their motion and brief, Plaintiffs raise essentially eight issues upon which it claims the Court can grant the relief sought. The Court will address these issues in the order presented by the parties.

I.

Was the procedure followed by the Legislature in enacting Act 219 of 1970 violative of Article IV, Secs 24 and 25, of the Michigan Constitution of 1963?

In order to understand this issue, some historical refer-

ence is necessary. Prior to 1968, procedures for the incorporation of cities and the annexation of territory thereto were governed by various provisions contained within 1909 PA 279 (the Home Rule Act), CL 117.01 *et seq.*, particularly by Sections 6, 7, 8 and 9 thereof, variously added to the Home Rule Act, and amended by 1951 PA 40; 1953 PA 173; 1955 PA 33; 1956 PA 77; 1957 PA 210; 1951 PA 58; and 1956 PA 68. However, in 1968, by the terms of 1968 PA 191, effective November 15, 1968, the Legislature passed the State Boundary Commission Act wherein they created a State Boundary Commission having responsibility, at that time, solely over proposed municipal incorporation. In turn, the State Boundary Commission Act (1968 PA 191) was not directly amended granting the State Boundary Commission authority over annexation petitions or resolutions until 1972 PA 362 effective January 9, 1973, well *after* the completion of the proceedings herein complained of. However, the Legislature did, by 1970 PA 219 effective April 1, 1971, amend the Home Rule Cities Act (1909 PA 279) and specifically Section 9 thereof, by adding, *inter alia*, the following language to Section 9 of 1909 PA 279:

"(1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1958, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern . . .

"(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for

annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

"(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

"(9) The provisions of section 14 shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

"(10) The provisions of sections 8 and 8a shall not be applicable to petitions or resolutions filed with the state boundary commission.

"(11) On and after the effective date of the 1970 amendments to this section, and so long as Act No. 191 of the Public Acts of 1968 is in effect, annexation of territory from a township or village to a home rule city

shall be as provided in this section and no other means of annexation shall be effective."

The proposed annexation in dispute in this matter was a purported annexation conducted under the provisions of subsection 4 of Sec 9 of 1909 PA 279, i.e., a commission order not subject to referendum because 100 persons or less resided in the area to be annexed.

There is no question that the Legislature, by the adoption of 1970 PA 219 amending the provisions of Section 9 of 1909 PA 279, attempted to increase the powers and duties of the State Boundary Commission created by 1968 PA 191, by giving them additional "supervisory" duties over annexation matters. Plaintiffs thus contend such legislative effort is constitutionally deficient because of the provisions of Const 1963, art 4, §24, and art 4, §25, which read as follows:

"§24 No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

"§25 No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be reenacted and published at length."

In support of their contention, Plaintiffs most vigorously put forward the authority of *Alan* v *Wayne County*, 388 Mich 210 (1972), 200 NW 2d 628, the famous (or infamous) Detroit Tiger Stadium case, as well as the authority of *Mok* v *Detroit Building and Savings Association, No. 4*, 30 Mich 511 (1875). Defendants, however, in reply also rely upon

Alan, supra, and attempt to distinguish the factual situation there from the facts at hand. In light, however, of the broad language of *Alan*, the specific overruling of *Burton* v *Koch*, 184 Mich 250 (1915), therein, and the factors hereafter mentioned, Plaintiffs' position, *prior to the 1972 amendment to the Boundary Commission Act*, appears to be the better taken. We are not dealing here with a situation where, because of a special fact situation, two absolutely conflicting statutes are passed, thus requiring a judicial interpretation, but rather, succinctly put, we are dealing with a situation where the Legislature sought to do indirectly what it certainly could have done, and later did, directly, i.e., amend the State Boundary Commission Act. By amending the Home Rule Cities Act through adoption of 1970 PA 219 it conferred additional powers upon the State Boundary Commission, i.e., jurisdiction over annexations, it obviated provisions for election in proposed territories for annexation of less than 100 residents, and, *inter alia*, it limited means of annexation to the ways provided in Sec 9, 1909 PA 279. It is at least at this point where Art 4, §24, *supra*, comes into play, for neither in the title of 1909 PA 279 nor in the title of 1970 PA 219 is the object of the law, to wit, "annexation," mentioned. Rather the title reads, "An act to provide for the incorporation of cities and for revising and amending their charters." Nor does the title of 1970 PA 219 mention the conferring of additional powers over the subject of annexation on the State Boundary Commission. Rather than confer powers of home rule upon cities, 1970 PA 219 appears to substantially abrogate those powers by conferring heretofore local duties and responsibilities upon a state agency. (See *Underwood* v *McDuffee*, 15 Mich 361.)

Turning now to the question of Art 4, §25, i.e., whether or not the amendment to 1909 PA 279, adopted by 1970 PA 219, in effect amended 1968 PA 191, and, if so, whether or

not it was necessary in order to comply with Art 4, §25, of the 1963 Constitution to reenact and publish 1968 PA 921 at length, Justice Williams in his majority opinion in *Alan* has laid to rest the reasoning of *Burton* v *Koch, supra.* Mr. Justice Williams said:

> "*Burton*, on the other hand, stands for the rule that you can amend statute C by putting in statute B for the purpose of amending statute C so long as you make no specific reference to C, merely by republishing statute B under Constitution 1963, Art 4, §25, but without republishing statute C."

In our fact situation, however, specific reference was made to "statute C," though in fact there are not as many needed "cross references" as in the *Mok* case. It is clear that direct reference to the State Boundary Commission Act prior to its 1972 amendment would have in no way informed an individual that the State Boundary Commission now had jurisdiction over annexation proceedings, nor would a reference to the title of the Home Rule Cities Act in and of itself put an individual on notice that annexation proceedings were dealt with therein. Only upon close scrutiny of the amendments passed by 1970 PA 219 to Section 9 of the Home Cities Act can reference be found to the authority of the Boundary Commission in the areas of annexation. Mr. Justice Williams in his *Alan* decision at p 281 said as follows:

> "*Mok* says the Constitution requires you to do the whole job right, *Burton* says it is good enough to do the job half right. Furthermore, *Burton* says you can avoid the second half of the job of republication if you hide your purpose whereas *Mok* requires the second half of the job of republication even though you disclose your purpose.

> "This court is convinced the Constitution is not satisfied with half way measures and does not prefer dissimulation to straightforwardness. We adopt the rule of *Mok* and overrule *Burton*."

The obvious intention of the Legislature to confer new and additional duties and responsibilities upon the State Boundary Commission is apparent by the very thrust of 1970 PA 219. That the job was only half finished after the adoption of 1970 PA 219 is evident by the adoption of 1972 PA 362 in which the State Boundary Commission Act was specifically amended authorizing the Boundary Commission to exercise jurisdiction over matters of annexation of territory to a city. Again, as Mr. Justice Williams said on p 285 of *Alan*:

> "There is nothing complicated, burdensome, unreasonable or obscure about what we say here today. If a bill under consideration is intended, whether directly *or indirectly*, to revise, alter or amend the operation of previous statutes, then the Constitution, unless and until appropriately amended, requires that the Legislature do in fact what it intends to do by operation." (Emphasis added.)

In conclusion, though recognizing the authority of *Village of Kingsford* v *Cudlip*, 258 Mich 144, which held that the title of 1909 PA 279, which provided for the incorporation of villages and for revising and amending their charters was sufficient language to sustain provisions for annexation, this Court holds that, in light of *Alan* v *Wayne County*, failure of the Legislature to express the object of the Legislature to deal with the subject of 219 specifically in the title annexation, when taken in conjunction with Plaintiffs' arguments concerning Art 4, §25, i.e., amendment by reference and

without reenactment, make the adoption of 1970 PA 219 constitutionally deficient, and Plaintiffs' motion for summary judgment is granted on this ground.

II.

Sufficiency of the criteria in 1968 PA 191 for guidance

Though resolution of issue No. I requires the granting to Plaintiffs the relief prayed for, due to the controversy surrounding that issue, and the ever-present possibility of appeal, the Court will decide all other issues raised herein.

Though Plaintiff makes a compelling argument with reference to the legislative failure to establish sufficient standards and guidelines within which the State Boundary Commission shall act, this Court cannot say that the Legislature totally abrogated its responsibility in this complex area and made an improper delegation of legislative authority to the State Boundary Commission. For years the field of annexation had been fraught with local political evils, including rural-urban in-fighting, unseemly municipal rivalries, and blatant grabs for tax base. Though wide discretion is granted to the State Boundary Commission, that discretion is no longer unbridled. The act contains provisions for judicial review. Plaintiffs' motion for summary judgment on this ground is denied.

III.

The classification of "100 persons or less" provided in CL 117.9(4) does not rest upon such a difference in situation or circumstances as to constitutionally permit such a division.

Plaintiffs, though recognizing there is no absolute right to vote on questions of municipal annexation grounded upon a constitutional basis, submit that the granting of the right to vote by way of referendum on territories to be annexed of more than 100 persons and denying it to territories of less than 100 persons is arbitrary and discriminatory and a violation of the equal protection clause. Such a provision appears to this Court to be based upon a considered pragmatism and is not in and of itself constitutionally suspect. Plaintiffs' request for summary judgment on this ground is denied.

IV.

A district designed to exclude objecting voters is a gerrymander, and the Boundary Commission has a duty to take corrective action or reject a gerrymandered petition.

Plaintiffs have failed to indicate to the Court by way of either law or fact a case for the application of the concept of gerrymandering, either in its pure "geographical" sense or in a "political-economic" context. There is no indication upon the referenced record, or for that matter in Plaintiffs' brief, that the proposed annexation is so designed as to rob the township of so much of its tax base that it can no longer exist as a political entity. Plaintiffs' contentions that Defendant Boundary Commission was obliged to submit the later petition for the annexation of the entire township to the voters is unfounded, and the request for summary judgment on this ground is denied.

V.

The failure of the Boundary Commission to promulgate rules as required by the Act and the Administrative Procedures Act.

Though it is unfathomable to this Court how any administrative body can function without lawfully adopted rules governing its own proceedings, Plaintiffs have failed to point out to this Court how such a failure on the part of the State Boundary Commission has in any way prejudiced them in their presentation of their opposition to said annexation or how such failure adversely affects the decision made by the Boundary Commission. Plaintiffs' motion for summary judgment on this ground is denied.

VI.

The proceedings of the Boundary Commission are regulated by the contested case provisions of the Administrative Procedures Act, and failure to follow those provisions requires reversal of the determination.

Plaintiffs' arguments in this regard all ultimately bear upon the Plaintiffs' right to judicial review. Since that right is unquestioned and is presently being exercised, Plaintiffs have failed to point out to the Court how the agency's purported failure to treat the matter as a contested case in any way affected either the substantive or procedural rights of Plaintiff. Plaintiffs' motion for summary judgment on this ground is denied.

VII.

The provisions of 1968 PA 261 were not observed and such failure renders the Commission findings reversible.

Plaintiffs contend the Boundary Commission was required by 1968 PA 261 to hold its deliberative session in public. Without any lengthy discourse on the intended purport of 1968 PA 261, it is clear to this Court that a state administrative agency speaks through its enunciated orders encompassing findings of fact and law based upon the evidence educed at a public hearing. This Court sees no reason why the deliberative give and take of a multi-member tribunal should be made part of the public record, any more so than this individual judge's thought processes while arriving at a decision should be made part of the record. Plaintiffs' motion for summary judgment on this ground is denied.

VIII.

That the Commission ignored the criteria of Section 9 and substituted their own criteria for decision.

This ground raised by Plaintiffs really goes to the ultimate merits of the controversy. Since the early portion of this opinion makes decision on the merits unnecessary and since Plaintiffs have failed to point out where as a matter of law Defendant Commission did ignore the criteria of Section 9 and selected their own criteria for decision, Plaintiffs' motion for summary judgment on this ground is likewise denied.

CONCLUSION

For the reasons indicated herein, in subheading I, Plaintiffs' motion for summary judgment is granted, this Court having specifically denied all other grounds raised. An order in conformity with this Opinion shall enter within ten days or this Opinion shall become the final order of this Court.

DONALD L. REISIG
Circuit Judge

Dated: 9/11/73

EXHIBIT B

STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE
COUNTY OF INGHAM

TOWNSHIP OF NOVI, et al. Plaintiff vs. STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, et al. Defendant	File No. 14544-C

OPINION

The Township of Novi consists of eight (8), separate and distinct parcels. On April 23, 1971 a petition was filed with the State Boundary Commission by the City of Novi seeking to annex seven (7) of the eight (8) parcels. The area to be annexed contained approximately seventy (70) per cent of the total valuation of property in the Township. Within the seven (7) parcels there were less than 100 persons residing at the time of the filing of the petition. In the eighth parcel (not included in the petition) there were upwards of 100 persons residing.

Subsequently and before hearing on the petition to annex the seven (7) parcels to the City of Novi, there was filed with the Commission a petition to bring about the annexation of the eighth parcel. Both petitions were determined to be legally sufficient. A request made to the Commission to consolidate the two petitions for hearing and

determination was denied with the Commission holding that it ". . . can find no authority under the law . . ." for considering the annexation of the eighth parcel along with the other seven parcels of Novi Township.

MCLA 117.9(5) provides that if more than 100 persons reside in the area approved (by the Commission) for annexation referendum is available and a vote is to be taken. MCLA 117.9(4) on the other hand provides that if less than 100 persons reside in the area to be annexed the Commission's order shall not be subject to a referendum. (The Court is informed that after a later consideration and approval of the petition to annex the eighth parcel the voters overwhelmingly rejected the Commission's determination.)

Plaintiff Township, with support from intervening Plaintiffs, have moved for summary judgment setting forth numerous grounds and reasons therefor. Because this matter is determined upon certain issues it will not be necessary to here discuss or resolve the others.

I.

WAS THE PROCEDURE FOLLOWED BY THE LEGISLATURE IN ENACTING ACT 219 OF 1970 VIOLATIVE OF ARTICLE IV, SECTIONS 24 AND 25, OF THE MICHIGAN CONSTITUTION OF 1963?

This Court concludes that it was in violation of the sections of the Constitution mentioned.

The Home Rules Cities Act (Act 279 of 1909; MCLA 117.1 et seq.; MSA 5.2071 et seq.) was adopted as ". . . an act to provide for the incorporation of cities and for

revising and amending their charters." It contained, commencing at Section 6, provisions relating to annexation of territory to a city and the incorporation of new cities and consolidation of cities. Annexations were to be accomplished generally after initial petitions to boards of supervisors.

In 1968 the State Boundary Commission Act was adopted (Act 191) as ". . . an act to create a State Boundary Commission; to prescribe its powers and duties; to provide for the incorporation and consolidation of cities and villages; and to repeal certain acts and parts of acts." By this statute the legislature purported to create a State Boundary Commission with authority over incorporation and consolidation only. It did not expressly repeal any part of the Home Rule Cities Act, but provided at Section 7 that henceforth all incorporation proceedings would be produced by the State Boundary Commission under the provisions of said Act 191, rather than by the boards of supervisors.

By Act 219 of 1970 the Legislature purported to add annexations to the authority of the Commission even though the enabling portions of Act 191 did not include annexation. This Act further purported to amend Sections 6, 8, 8A, 9 and 14 of the Home Rule Cities Act. The legislature in fact only re-enacted and published at length Section 9 of the Home Rule Cities Act and did not re-publish or re-enact any of the other sections or parts of the State Boundary Commission Act.

The State Boundary Commission Act was not so amended as to expressly grant authority over annexation matters until the passage of PA 362 of 1972 (effective January 9, 1973)—a time subsequent to these proceedings.

It is apparent to the Court that the Legislature, by adopting 1970 PA 219 attempted to increase the powers and duties of the Commission.

Section 24 of Article IV of the Constitution of 1963 provides:

> "No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

Section 25 provides:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be reenacted and published at length."

Plaintiff Township relies upon *Alan* v *Wayne County,* 388 Mich 210 August 30, 1972), and this Court believes such reliance is well taken and well founded. (It would appear that the Legislature, in PA 362 of 1972, also recognized the untenable position the Commission was in prior to the enactment.)

The matter of annexation authority is not mentioned in 1909 PA 279 and it is not mentioned in 1970 PA 219. Herein lies a violation of Article IV, Section 24.

As to violation of Article IV, Section 25, it is clear that the Legislature, in enacting 1970 PA 219, did attempt to revise, alter, or amend by reference to title only and without re-enacting and publishing at length. The end result

of the Legislature's conduct is to cause one desirous of determining the law to hop, skip, and jump from one act to another—something the *Alan* court appears to be prohibiting and discouraging. This Court cannot improve upon the language or reasoning of Justice Williams as set forth in *Alan* commencing at page 268.

II.

DOES THE CLASSIFICATION OF "100 PERSONS OR LESS" IN MCLA 117.9(4) REST UPON SUCH A DIFFERENCE IN SITUATION OR CIRCUMSTANCE AS TO CONSTITUTIONALLY PERMIT SUCH DIVISION?

This Court concludes in the negative.

If one resides in an area to be annexed containing upwards of 100 persons he has the right to referendum; if he resides in an area wherein less persons reside he is barred from such right or privilege. (MCLA 117.9(4) and MCLA 117.9(5)). No reasonable basis or reason for such division appears in the statute, and none comes to mind.

Article I, Section 1 of the Michigan Constitution of 1963 provides:

> "All political power is inherent in the people. Government is instituted for their *equal* benefit, security and protection." (italics supplied)

Article I, Section 2 reads in part:

> "No person shall be denied the *equal* protection of the laws; . . ." (italics supplied)

It is argued on behalf of the Commission that the matter of establishment of municipal corporations and alterations in their territory by boundary changes are purely discretionary legislative acts within the legislative prerogative. *Village of Kingsford* v *Cudlip*, 258 Mich 144 (1932). While not denying this general proposition, still, where the legislature has seen fit to have the ultimate determination resolved by vote in *some cases* (where more than 100 persons reside in the area proposed to be annexed), hasn't the legislature then returned this area of its authority back to the residents? Why then this 100-person dividing line?

In *Bankhead* v *McEwan*, 35 Mich App 7 (1971) the Court of Appeals majority held that: "Equal protection of the law does not prevent a reasonable classification by legislative enactment . . ."; and "Legislative classification by population will be upheld where there is a reasonable relationship between the restriction and population." In numerous Michigan cases it has been held that the fundamental rule of classification for purposes of legislation is that it shall not be arbitrary, unreasonable, or capricious. *Fitzpatrick Liquor Control Commission*, 316 Mich 83; *Miller* v *Detroit Savings Bank*, 289 Mich 494 (1939); and *Baker* v *State Land Office Board*, 294 Mich 587 (1940). Classification, to be lawful, must be based on natural distinguishing characteristics, i.e. some valid distinction, or some substantial and real differences in classes. *Kelly* v *Boyne*, 239 Mich 204 (1927), *Mulloy* v *Wayne County Board of Supervisors*, 246 Mich 632 (1929), cited in *Irishman's Lot, Inc.* v *Secretary of State*, 338 Mich at 666.

No substantial or real differences in classes here appears, and no valid distinction appears to exist for this denying to some, but granting to others, the right or privilege of referenda.

For the reasons stated the motion for summary judgment in favor of Novi Township is granted, and an appropriate judgment may enter.

Dated: January 3, 1974.

JACK W. WARREN /s/
Jack W. Warren, Circuit Judge

EXHIBIT C

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF INGHAM

TOWNSHIP OF BRIGHTON, A MUNICIPAL CORPORATION IN LIVINGSTON COUNTY, MICHIGAN, AND MURIEL BEURMANN, Plaintiffs, vs. MICHIGAN STATE BOUNDARY COMMISSION, ET AL., Defendants.	File No. 15497-C

Opinion of the Court given by the Honorable Donald L. Reisig, Circuit Judge, at Lansing, Michigan, on Friday, January 4, 1974.

Lansing, Michigan
Friday, January 4, 1974

• • •

THE COURT: Counsel, I do not have a prepared decision to hand out.

MR. BAUCKHAM: I might say, we came to Judge Warren's court thinking we were going to take testimony. But, as the matter proceeded, he felt that the legal issues were dispositive. We all agreed not to take testimony. That's what happened.

THE COURT: I had assumed, in turn, as we talked earlier, that we were going to be disposing of all the issues here today. That false assumption on my part has some bearing upon what I'm going to do; it is a pragmatic bearing, because, pragmatically, we're dealing here in a complex area. Last time I knew there were what?—seven or eight of these lawsuits floating around, probably more than that—

MR. BAUCKHAM: I think it's about correct.

THE COURT: —in this circuit alone.
I think the matter is in need of resolution.

Counsel in the Midland County case attempted to get me to say things in my order which I really didn't say. No, I don't mean it that way—tried to get me to resolve issues that I did not believe were before me. I did not believe I should overreach. I may be guilty of that offense, judicial offense in this matter, because I think it's time we sent this matter, entire issues here involved, up to the Supreme Court, which adopted Alan. Let's see what they got to say about some of the issues here.

This is my Opinion, subject to the right of correction or deletion by way of adding any specific finding of fact or any authority which I may by oversight overlook: I specifically reaffirm everything said in my Opinion in the Midland County case. I shouldn't say Midland County. Midland—

MR. BAUCKHAM: Township versus —

THE COURT: —*Midland Township* versus *the City of Midland,* heretofore decided in this circuit, with reference to the constitutionality of PA 219, 1970.

Let me make it clear, that in that decision this local circuit judge did not attempt to overrule the long standing authority of *Kingsford* versus *Cudlip*. Any reference thereto, I think, is fully explained in the decision as merely one aspect of a makeweight-type of reason for that decision. There is a Home Rule Act, viable Home Rule Act.

The next point of consideration is having to reaffirm that decision. That Act 219 of 1970, for all the reasons therein stated, is unconstitutional.

What impact does that have upon this proceeding?

I asked Mr. Bauckham about whether or not the boundary commission had based its findings upon Act 362 of 1972. They certainly didn't say so in their written findings, in their written decision. In fact, they make specific reference to the other Acts but not that Act. I don't know whether that's really important or not.

The Act existed at the time they made their decision, went into effect what? Twenty-eight days before. Longer than that. Excuse me. It went into effect January 9th. Their decision, the Opinion signed by the chairman was dated 3-29-72. The other date I was thinking of was the continued hearing date.

Wasn't that February 7th?

MR. BAUCKHAM: It was in February, your Honor.

THE COURT: I think at some point the commission here could have recognized that the Act 362, 1972, had gone into effect and could have hedged their bets a little bit. They could have said, "Township, City, interested

people, come on back here. We're now going to hold a hearing under this Act."

Now, granted, if 219 of 1970 was unconstitutional and they had received the petition, they had no basis of accepting the petition, all the arguments made by Mr. Bauckham. But I think they could have saved it in some fashion. I have a strong proclivity, and I had a strong proclivity after reading the Briefs, of finding somehow in which this Act 362 of 1972 saved this proceeding. That's what I wanted to rule. Why? Because they didn't like my decision in the Midland case. I felt it was dictated by Alan. If I am wrong, I am wrong. I'll be happy to be reversed. Without Alan I wouldn't have ruled the same way, without some saving act on the part of the legislature. I cannot, however, in all intellectual honesty, say the commission, the boundary commission had the right to act upon petitions that it never would have received but for the passage of the Act that I previously ruled to be unconstitutional to-wit: 219 of 1970. There is no way that we can say they acted in contemplation of its effectiveness.

The law is clear that no law or single provision thereof can begin to speak until it takes effect, *Grant* vs. *City of Alpena*, 107 Mich 335, and numerous other decisions. I believe strong arguments can be made that the legislature could pass an act giving it re-prospective effect in this area. We're not talking about anything in which there are vested rights. Re-prospective statutes curing effects and acts done or authorizing or confirming exercise of powers are valuable where the legislature had authority to confer the power or authorize the acts except where there is an attempt to impair a vested right. Again, many authorities therefor, *Stott* vs. *Stott Realty Company*, 288 Mich 35, being a representative authority.

Now, I do not believe the fact that the last of the public hearings before the commission having come after the effective date of 362, 1972 is enough to save the action taken in this matter. The petitions were filed with the commission under an act which this court previously held to be unconstitutional. But for that act, petitions would not have been filed there, the commission would not have had the power to act at the time they acted.

I recognize in so ruling, that if we back this whole thing up again, again just as in our other case, we're confronted with dilemma. Okay? We strike down the petition because it was filed with the commission, another petition will be filed, and the commission will go through this whole process all over again. I understand there's already continuation of litigation in Midland County on the Midland County situation.

For the purpose of clarifying this matter, there's going to be a couple other aspects of my ruling, seeking clarifications, I should say. Before I say that, I just want to say this: I don't think, Mr. Bauckham,—I think I've said this in my Midland County decision case—I don't think Alan goes as far as you say it goes. We've got an honest difference of opinion. I recognize the protagonist's period don't go as far as I say it goes.

I am persuaded, upon mature reflection, that even if it could be held here that by the action of the boundary commission taken after the effective date of 362 of 1972, that in fact 362, 1972 can be applied to this fact situation, that even if it were so applied, we have problems. I, one, do not expect Mr. Bauckham's arguments that the Alan case then applies. I think Act 362 of 1972, amending Act 191 of 1968, is a complete and total Act without any of

the constitutional infirmities that Mr. Williams found in the Alan case and that I found with reference to Act 219 of 1970.

Having said that, however, we must then go on to some of the other contentions that Mr. Bauckham has raised. And, again I say upon mature reflection, I find that the standards shaped by the legislature, Section 9, are inadequate. They are not standards; they are touchstones. The legislature has delegated to the boundary commission power that except for procedural abuse is not subject to judicial review. There are no criteria for measurements in any of the actions of the boundary commission. As I believe I said in my Midland County case, Midland case: "For years the field of annexation has been fraught with political evils, including rural-urban in-fighting, unseemly municipal rivalries, and blatant grabs for tax base." The action of the legislature delegating this authority to the boundary commission fails to prescribe standards for guidance of the boundary commission sufficiently precise as the subject matter either requires or permits.

Now to make it a total package—Judge Warren says, "The matter won't come back to me"—I do not find that the decision of the boundary commission to deny the request to include the balance of the so-called B.U.G.A. area was unsupported by competent, material and substantial evidence on the whole record. Let me say that positively.

I guess I can't do it, can I, since I haven't read the record? You got me.

Let me put it this way: nothing you have pointed out in your Brief, Mr. Bauckham, in any way leads me to the

conclusion that the boundary commission abused its discretion in this regard. I have my own opinion as to what that petition entailed, what we are talking about here, and I think you gentlemen know what I'm speaking of.

Be that as it may, with reference to the classification of hundred persons or less, I'm not the Jacksonian that my brother Warren is. I do not find there are any valid contentions here of equal protection or anything of this nature or shape. I view this as a valid classification, as I believe I said earlier on pragmatic considerations.

With reference to the failure to adopt rules and regulations, I would again re-adopt and reaffirm my Opinion in the Midland case. I do not see how an agency operates without rules and regulations. But plaintiffs here have totally failed to point out to this court how the failure to have rules and regulations have in any way deprived them of fundamental due process.

As far as the contested case, I believe I know in the Administrative Procedures Act what a contested case is. I don't know whether or not the boundary commission or the attorney general considered this to be a contested case, but I think it was handled in the same fashion as a contested case. And, again, plaintiffs have failed to point out to this court how the failure to handle this as a contested case in any way affected their rights or remedies. I think one of the aspects, if it wasn't a contested case, they wouldn't be here today, and they're here today. I deny plaintiffs any relief on this ground.

Finally, with reference to PA 261, 1968, the so-called what?—open meeting provision or clause, I'm a firm believer in that type of concept. Meetings should be open to

the public. But I believe when you're talking about a quasi-judicial body or quasi-administrative body, whatever you want to call a boundary commission, those five gentlemen should have an opportunity to meet and discuss without the glare of reporters and spectators their various points of view no differently than the seven or three members of an appellate court can discuss these matters. I don't think that they had to hold their so-called adjudicative session in public.

I think I've ruled on all points. My argument is an anchor-type argument.

I accept Mr. Bauckham's and the plaintiffs' position, that having previously ruled that 219 of 1970 is unconstitutional, that in no way was this unconstitutionality cured to make the boundary commission the proper repository of the petitions heretofore filed. The boundary commission did not in fact act upon basis of 362, 1972 when they did act upon the petitions here in question, and that even if they did, Act 362 of 1972 is insufficient in that it fails to promulgate sufficient standards.

To the extent that Act 219 of 1970, which I have previously and in this case ruled unconstitutional, to the extent that that Act incorporated by reference Section 9 of the Boundary Commission Act—is that right?—yes, the standards of Section 9 of the Boundary Commission Act, PA 1968 number 191, I must also add that reason besides the Alan reason to the unconstitutionality. This is not a contention which I accepted or adopted in my Midland case.

The genesis of my reversing myself on that issue was the point that you and I, Mr. Bauckham, made in our repartee here, that those Section 9 standards were the original standards adopted for the boundary commission to govern

incorporations, and by suddenly adding the whole ambit of annexation here, I don't see how you can just use the very same standards. Yes, there are lots of similarities, but there are lots of differences. I think the legislature, just thinking upon mature reflection, only did a half a job.

An Order may enter accordingly.

I hope counsel will do it as quickly as possible so that this vehicle as well as, I assume, Judge Warren's vehicle, as well as the Midland vehicle can all reach the appellate courts at the same time, can thereby be joined for argument. I would encourage, sought to get this issue before the Supreme Court as quickly as possible.

Thank you for an orderly presentation.

MR. TOY: Thank you, your Honor.

MR. BAUCKHAM: Thank you, your Honor.

CERTIFICATE OF REPORTER

STATE OF MICHIGAN, }
COUNTY OF INGHAM } ss

I, DANIEL MORENO, Official Court Reporter within and for the county of Ingham, State of Michigan, do certify that I reported the proceedings had in the matter of Township of Brighton, et al., vs. Michigan State Boundary Commission, et al., file number 15497-C, before the Honorable Donald L. Reisig, Circuit Judge, at Lansing, Michigan, on Friday, January 4, 1974; and that the annexed and foregoing Opinion of the Court is a true and correct record of my Stenotype notes.

DANIEL MORENO /s/
DANIEL MORENO, Court Reporter

EXHIBIT D

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan, and ROBERT B. CHATTERTON, individually and as supervisor of said township, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF MIDLAND, Intervening Defendant-Appellant.	Oct. 13, 1975 Nos. 19154-19156

BEFORE: V. J. Brennan, P. J., and D. E. Holbrook and M. F. Cavanagh, JJ.

D. E. HOLBROOK, J.

These three appeals involve the same case, heard in the Circuit Court for the County of Ingham. The plaintiffs-appellees and both defendants-appellants were granted leave to appeal by our Court, each claiming that the trial court committed error in one or more of its rulings on the issues presented therein.

The instant case involves two petitions for annexation to the City of Midland. 71 AT 7 was a petition for annexation of 319 acres of the Township of Midland into the City of

Midland, and was filed with the County Board of Commissioners on February 15, 1968, and was transferred to the State Boundary Commission (SBC) on April 28, 1971, pursuant to 1970 PA 219. These 319 acres were contiguous to the City of Midland, and the site for a nuclear energy plant. 71-AR-11 was a petition to annex the remainder of the Township of Midland into the City of Midland, and was filed with the SBC May 6, 1971 under the same 1970 PA 219. Both petitions were approved by the SBC.

The Circuit Court for Ingham County granted a motion for summary judgment brought by plaintiffs, claiming that 1970 PA 219 was unconstitutional. Both defendants-appellants appeal from the summary judgment, and plaintiffs appeal claiming that the said statute is deficient for other reasons as claimed by plaintiffs in their motion for summary judgment, but which were rejected by the trial court. The trial judge in ruling on the matter wrote a very thorough opinion, which we deem advisable to set forth in full herein, *viz.*:

"This matter is submitted to the court on briefs and after oral argument on plaintiffs' motion for summary judgment. In their motion and brief, plaintiffs raise essentially eight issues upon which it claims the court can grant the relief sought. The court will address these issues in the order presented by the parties.

"I.

"Was the procedure followed by the Legislature in enacting Act 219 of 1970 violative of Article IV, Secs 24 and 25, of the Michigan Constitution of 1963?

"In order to understand this issue, some historical refer-

ence is necessary. Prior to 1968, procedures for the incorporation of cities and the annexation of territory thereto were governed by various provisions contained within 1909 PA 279 (the Home Rule Act), CL 117.01 *et seq.*, particularly by Sections 6, 7, 8 and 9 thereof, variously added to the Home Rule Act, and amended by 1951 PA 40; 1953 PA 173; 1955 PA 33; 1956 PA 77; 1957 PA 210; 1951 PA 58; and 1956 PA 68. However, in 1968, by the terms of 1968 PA 191, effective November 15, 1968, the Legislature passed the State Boundary Commission Act wherein they created a State Boundary Commission having responsibility, at that time, solely over proposed municipal incorporation. In turn, the State Boundary Commission Act (1968 PA 191) was not directly amended granting the State Boundary Commission authority over annexation petitions or resolutions until 1972 PA 362 effective January 9, 1973, well after the completion of the proceedings herein complained of. However, the Legislature did, by 1970 PA 219 effective April 1, 1971, amend the Home Rule Cities Act (1909 PA 279) and specifically Section 9 thereof, by adding, *inter alia*, the following language to Section 9 of 1909 PA 279:

"'(1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern . . .

"'(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a

petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

"'(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

"'(9) The provisions of section 14 shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

"'(10) The provisions of sections 8 and 8a shall not be applicable to petitions or resolutions filed with the state boundary commission.

"'(11) On and after the effective date of the 1970 amendments to this section, and so long as Act No. 191 of the Public Acts of 1968 is in effect, annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective.'

"The proposed annexation in dispute in this matter was a purported annexation conducted under the provisions of

subsection 4 of Sec 9 of 1909 PA 279, *i.e.*, a commission order not subject to referendum because 100 persons or less resided in the area to be annexed.

"There is no question that the Legislature, by the adoption of 1970 PA 219 amending the provisions of Section 9 of 1909 PA 279, attempted to increase the powers and duties of the State Boundary Commission created by 1968 PA 191, by giving them additional 'supervisory' duties over annexation matters. Plaintiffs thus contend such legislative effort is constitutionally deficient because of the provisions of Const 1963, art 4, §24, and art 4, §25, which reads as follows:

"'§24 No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

"'§25 No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be reenacted and published at length.'

"In support of their contention, plaintiffs most vigorously put forward the authority of *Alan* v *Wayne County*, 388 Mich 210; 200 NW2d 628 (1972), the famous (or infamous) Detroit Tiger Stadium case, as well as the authority of *Mok* v *Detroit Building & Savings Association, No. 4*, 30 Mich 511 (1875). Defendants, however, in reply also rely upon *Alan, supra*, and attempt to distinguish the factual situation there from the facts at hand. In light, however, of the broad language of *Alan*, the specific overruling of *Burton* v *Koch*, 184 Mich 250; ——— NW ———

(1915), therein, and the factors hereafter mentioned, plaintiffs' position, *prior to the 1972 amendment to the Boundary Commision Act,* appears to be the better taken. We are not dealing here with a situation where, because of a special fact situation, two absolutely conflicting statutes are passed, thus requiring a judicial interpretation, but rather, succintly put, we are dealing with a situation where the Legislature sought to do indirectly what it certainly could have done, and later did, directly, *i.e.*, amend the State Boundary Commission Act. By amending the Home Rule Cities Act through adoption of 1970 PA 219 it conferred, additional powers upon the State Boundary Commission, *i.e.*, jurisdiction over annexations, it obviated provisions for election in proposed territories for annexation of less than 100 residents, and, *inter alia,* it limited means of annexation to the ways provided in Sec 9, 1909 PA 279. It is at least at this point where Art 4, §24, *supra,* comes into play, for neither in the title of 1909 PA 279 nor in the title of 1970 PA 219 is the object of the law, to wit, 'annexation,' mentioned. Rather the title reads, 'An act to provide for the incorporation of cities and for revising and amending their charters.' Nor does the title of 1970 PA 219 mention the conferring of additional powers over the subject of annexation on the State Boundary Commission. Rather than confer powers of home rule upon cities, 1970 PA 219 appears to substantially abrogate those powers by conferring heretofore local duties and responsibilities upon a state agency. (See *Underwood* v *McDuffee*, 15 Mich 361 [1867].)

"Turning now to the question of Art 4, §25, *i.e.*, whether or not the amendment to 1909 PA 279, adopted by 1970 PA 219, in effect amended 1968 PA 191, and, if so, whether or not it was necessary in order to comply with Art 4, §25, of the 1963 Constitution to reenact and publish 1968 PA

191 at length, Justice Williams in his majority opinion in *Alan* has laid to rest the reasoning of *Burton* v *Koch, supra.* Mr. Justice Williams said:

"'*Burton* on the other hand, stands for the rule that you can amend statute C by putting in statute B for the purpose of amending statute C so long as you make no specific reference to C, merely by republishing statute B under Constitution 1963, Art 4, §25, but without republishing statute C.'

"In our fact situation, however, specific reference was made to 'statute C,' though in fact there are not as many needed 'cross references' as in the *Mok* case. It is clear that direct reference to the State Boundary Commission Act prior to its 1972 amendment would have in no way informed an individual that the State Boundary Commission now had jurisdiction over annexation proceedings, nor would a reference to the title of the Home Rule Cities Act in and of itself put an individual on notice that annexation proceedings were dealt with therein. Only upon close scrutiny of the amendments passed by 1970 PA 219 to Section 9 of the Home Cities Act can reference be found to the authority of the Boundary Commission in the areas of annexation. Mr. Justice Williams in his *Alan* decision at p 281; 200 NW2d p 663, said as follows:

"'*Mok* says the Constitution requires you to do the whole job right. *Burton* says it is good enough to do the job half right. Furthermore, *Burton* says you can avoid the second half of the job of republication if you hide your purpose whereas *Mok* requires the second half of the job of republication even though you disclose your purpose.

"'This Court is convinced the Constitution is not satis-

fied with half way measures and does not prefer dissimulation to straightforwardness. We adopt the rule of *Mok* and overrule *Burton*.'

"The obvious intention of the Legislature to confer new and additional duties and responsibilities upon the State Boundary Commission is apparent by the very thrust of 1970 PA 219. That the job was only half finished after the adoption of 1970 PA 219 is evident by the adoption of 1972 PA 362 in which the State Boundary Commission Act was specifically amended authorizing the Boundary Commission to exercise jurisdiction over matters of annexation of territory to a city. Again, as Mr. Justice Williams said on p 285; 200 NW2d p 665 of *Alan*:

" 'There is nothing complicated, burdensome, unreasonable or obscure about what we say here today. If a bill under consideration is intended, whether directly or *indirectly* to revise, alter or amend the operation of previous statutes, then the Constitution, unless and until appropriately amended, requires that the Legislature do in fact what it intends to do by operation.' (Emphasis added.)

"In conclusion, though recognizing the authority of *Village of Kingsford* v *Cudlip*, 258 Mich 144; 241 NW 893 (1932), which held that the title of 1909 PA 279, which provided for the incorporation of villages and for revising and amending their charters was sufficient language to sustain provisions for annexation, this court holds that, in light of *Alan* v *Wayne County*, failure of the Legislature to express the object of the Legislature to deal with the subject of 219 specifically in the title annexation, when taken in conjunction with plaintiffs' arguments concerning Art 4, §25, *i.e.*, amendment by reference and without reenactment, make the adoption of 1970 PA 219 constitu-

tionally deficient, and plaintiffs' motion for summary judgment is granted on this ground.

"II.

"Sufficiency of the criteria in 1968 PA 191 for guidance.

"Though resolution of issue No. I requires the granting to plaintiffs the relief prayed for, due to the controversy surrounding that issue, and the ever-present possibility of appeal, the court will decide all other issues raised herein.

"Though plaintiff makes a compelling argument with reference to the legislative failure to establish sufficient standards and guidelines within which the State Boundary Commission shall act, this court cannot say that the Legislature totally abrogated its responsibility in this complex area and made an improper delegation of legislative authority to the State Boundary Commission. For years the field of annexation had been fraught with local political evils, including rural-urban in-fighting, unseemly municipal rivalries, and blatant grabs for tax base. Though wide discretion is granted to the State Boundary Commission, that discretion is no longer unbridled. The act contains provisions for judicial review. Plaintiffs' motion for summary judgment on this ground is denied.

"III.

"The classification of '100 persons or less' provided in CL 117.9(4) does not rest upon such a difference in situation or circumstances as to constitutionally permit such a division.

"Plaintiffs, though recognizing there is no absolute right to vote on questions of municipal annexation grounded

upon a constitutional basis, submit that the granting of the right to vote by way of referendum on territories to be annexed of more than 100 persons and denying it to territories of less than 100 persons is arbitrary and discriminatory and a violation of the equal protection clause. Such a provision appears to this court to be based upon a considered pragmatism and is not in and of itself constitutionally suspect. Plaintiffs' request for summary judgment on this ground is denied.

"IV.

"A district designed to exclude objecting voters is a gerrymander, and the Boundary Commission has a duty to take corrective action or reject a gerrymandered petition.

"Plaintiffs have failed to indicate to the court by way of either law or fact a case for the application of the concept of gerrymandering, either in its pure 'geographical' sense or in a 'political-economic' context. There is no indication upon the referenced record, or for that matter in plaintiffs' brief, that the proposed annexation is so designed as to rob the township of so much of its tax base that it can no longer exist as a political entity. Plaintiffs' contentions that defendant Boundary Commission was obliged to submit the later petition for the annexation of the entire township to the voters is unfounded, and the request for summary judgment on this ground is denied.

"V.

"The failure of the Boundary Commission to promulgate rules as required by the Act and the Administrative Procedures Act.

"Though it is unfathomable to this court how any administrative body can function without lawfully adopted rules governing its own proceedings, plaintiffs have failed to point out to this court how such a failure on the part of the State Boundary Commission has in any way prejudiced them in their presentation of their opposition to said annexation or how such failure adversely affects the decision made by the Boundary Commission. Plaintiffs' motion for summary judgment on this ground is denied.

"VI.

"The proceedings of the Boundary Commission are regulated by the contested case provisions of the Administrative Procedures Act, and failure to follow those provisions requires reversal of the determination.

"Plaintiffs' arguments in this regard all ultimately bear upon the plaintiffs' right to judicial review. Since that right is unquestioned and is presently being exercised, plaintiffs have failed to point out to the court how the agency's purported failure to treat the matter as a contested case in any way affected either the substantive or procedural rights of plaintiff. Plaintiffs' motion for summary judgment on this ground is denied.

"VII.

"The provision of 1968 PA 261 were not observed and such failure renders the Commission findings reversible.

"Plaintiffs contend the Boundary Commission was required by 1968 PA 261 to hold its deliberative session in public. Without any lengthy discourse on the intended purport of 1968 PA 261, it is clear to this court that a state administrative agency speaks through its enunciated orders

encompassing findings of fact and law based upon the evidence educed at a public hearing. This court sees no reason why the deliberative give and take of a multi-member tribunal should be made part of the public record, any more so than this individual judge's thought processes while arriving at a decision should be made part of the record. Plaintiffs' motion for summary judgment on this ground is denied.

"VIII.

"That the Commission ignored the criteria of Section 9 and substituted their own criteria for decision.

"This ground raised by plaintiffs really goes to the ultimate merits of the controversy. Since the earlier portion of this opinion makes decision on the merits unnecessary and since plaintiffs have failed to point out where as a matter of law defendant Commission did ignore the criteria of Section 9 and selected their own criteria for decision, plaintiffs' motion for summary judgment on this ground is likewise denied.

"CONCLUSION

"For the reasons indicated herein, in subheading I, plaintiffs; motion for summary judgment is granted, this court having specifically denied all other grounds raised. An order in conformity with this opinion shall enter with ten days or this opinion shall become the final order of this court." (Emphasis in original.)

A corrected final summary judgment was duly filed on the ninth day of November 1973 by the Circuit Judge. The said summary judgment is as follows:

"This cause, having come on to be heard upon a Motion for Summary Judgment filed by the plaintiffs therein and oral and written arguments of counsel for the respective parties having been presented to this court and this court being fully advised in the premises, IT IS HEREBY THE FINDINGS AND ORDER of this court as follows:

"FINDINGS

"1. The procedure followed by the Michigan legislature in enacting 1970 PA 219 is violative of Article IV, Sections 24 and 25, of the Michigan Constitution of 1963 and said Act is accordingly unconstitutional and of no force and effect for the following reasons:

"A. 1970 PA 219 did not include within its title as an object of the law the subject of 'annexation,' in violation of Art IV, Sec 24 of the 1963 Michigan Constitution.

"B. The title of 1970 PA 219 does not mention conferring of additional powers over the subject of annexation on the State Boundary Commission, in further violation of Art IV, Sec 24 of the 1963 Michigan Constitution.

"C. The legislature, in adopting 1970 PA 219, attempted to amend 1968 PA 191 without re-enacting or republishing said latter Act, in violation of Art IV, Sec 25 of the 1963 Michigan Constitution.

"2. Sufficient criteria is contained in 1968 PA 191 to support the delegation of legislative authority to a State Boundary Commission.

"3. The classification of '100 persons or less' provided in 1970 PA 219 is based upon a considered pragmatism and is not, in and of itself, constitutionally suspect.

"4. Plaintiffs have failed to indicate to the court, by way of either law or fact, a case for the application of the concept of gerrymandering, either in its pure 'geographical' sense or in a 'political-economic' context and there is no indication that the proposed annexation would rob the Township of so much of its tax base that it could no longer exist as a political entity. The Boundary Commission was, accordingly, not obligated to submit the annexation of the entire Township to the voters by way of referendum.

"5. Though it is unfathomable to this court how any administrative body can function without lawfully adopted rules governing its own proceedings, plaintiffs have failed to point out to this court how such a failure has in any way prejudiced plaintiffs in their presentation to the Commission or how such failure adversely affects the decision made by the Boundary Commission.

"6. The claim that the proceedings of the Boundary Commission are regulated by the 'contested case' provisions of the Administrative Procedures Act of the state ultimately bears upon the right of the plaintiffs to judicial review which is presently being exercised and plaintiffs have failed to show how any failure to follow the 'contested case' provisions have affected either the substantive or procedural rights of plaintiffs.

"7. 1968 PA 261 does not require the deliberative give and take of a multi-member tribunal to be made a part of the public record and conducted in public.

"8. Whether or not the Commission ignored the criteria of 1968 PA 191 in making its decision goes to the ultimate merits of the controversy and a decision on such merits is unnecessary as a result of the findings of this court in

paragraph 1 hereof. Furthermore, plaintiffs have failed to point out where, as a matter of law, the defendant State Boundary Commission did ignore such criteria in making its decision.

"9. Because the attempt by the legislature to grant exclusive jurisdiction over annexation proceedings by the adoption of 1970 PA 219 was constitutionally deficient and without force and effect as indicated in paragraph 1 of these findings, the decisions of the Michigan State Boundary Commission under Docket Nos. 71-AT-7 and 71-AR-11 are null and void.

"ORDER

"IT IS ORDERED AND ADJUDGED for the reasons set forth in paragraph 1 of the findings regarding the unconstitutionality of 1970 PA 219, that plaintiffs' Motion for Summary Judgment be granted and the orders of the State Boundary Commission under Docket Nos. 71-AT-7 and 71-AR-11 and all proceedings provided to be taken pursuant to said orders are hereby permanently enjoined and all proceedings for annexation thereunder are hereby declared null and void and of no force and effect.

"IT IS FURTHER ORDERED that the petitions transferred to the Boundary Commission from the Clerk of the County of Midland and considered by the Boundary Commission under its Docket No. 71-AT-7 are ordered returned by the Secretary of the State Boundary Commission to the Clerk of Midland County, on behalf of the Midland County Board of Commissioners for whatever action is deemed legally appropriate."

We review the issues raised and passed upon by the trial court in proper order.

IA.

Is 1970 PA 219 unconstitutional because it violates the proscription of Const 1963, art 4, §24, in that it purports to change the jurisdiction of the SBC which is outside of the title of said Act 219, and the title of the Homes Rule Cities Act?

Const 1963, art 4, §24, provides:

"No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

The purpose of Const 1963, art 4, §24, is to avoid the legislature passing laws not fully understood by them and by the public, and to notify them of the design of the statutory change. *Maki* v *City of East Tawas*, 385 Mich 151; 188 NW2d 593 (1971).

The issue presented is whether 1970 PA 219, amending the Home Rule Cities Act (hereinafter referred to as HRCA) in the area of annexation, may also encompass a grant of authority to the SBC, a state agency, the jurisdiction of which is clearly outside of the title of the HRCA. The question is not, as appellants assert, whether the HRCA title is sufficiently broad enough to include the object of the HRCA governing annexation. *Village of Kingsford* v *Cudlip*, 258 Mich 144; 241 NW 893 (1932) and *Hall* v *Calhoun County Bd of Supervisors*, 373 Mich 642; 130 NW2d 414 (1964). The question instead is whether the HRCA title is sufficiently broad to include the object of changing and increasing the jurisdiction of the SBC over annexation.

Here, the Act in question had two purposes—to withdraw certain annexation authority from the Home Rule Cities and to confer annexation authority on the SBC. The first purpose was obvious in the title, but the second purpose was anything but obvious. The legislature and the public should understand from the title that only provisions germane to the reasonable object of the title are being amended. *Blades* v *Bd of Water Commissioners of Detroit*, 122 Mich 366; 81 NW 271 (1899) and *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441, 466; 208 NW2d 469, 474 (1973). Those interested in the authority and jurisdiction of the SBC could hardly be expected to realize that a change was being made therein in another Act whose title has to do with Home Rule Cities.

It was inappropriate to find the provisions of Act 219 within the title of HRCA. It being inappropriate to find such provisions in the HRCA, then we observe that the public and the legislature were not clearly informed and aware of the intention and context of this legislation. We conclude that the trial court was correct in deciding that the title of the HRCA is sufficient to encompass the annexation authority of cities, but is not authority for the conclusion that the title of the HRCA and Act 219 are sufficient to encompass the subject of the annexation jurisdiction of an entirely separate state agency. *Alan* v *Wayne County*, 388 Mich 210; 200 NW2d 628 (1972). We rule that 1970 PA 219 is unconstitutional as violating Const 1963, art 4, §24.

IB.

Is 1970 PA 219 unconstitutional for the reason that it is in violation of Const 1963, art 4, §25, in that its purpose

is to amend the provisions and jurisdiction of the State Boundary Commission Act (hereinafter referred to as SBCA) without reenacting and republishing that Act?

Const 1963, art 4, §25 provides: "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length." Appellants assert that it was unnecessary to reenact and republish the SBCA because 1970 PA 219 did not amend the SBCA in any way. *Wayne County Prosecuting Attorney* v *Wayne County Bd of Commissioners*, 44 Mich App 144; 205 NW2d 27 (1972). Further, that as explained by Justice COOLEY in *People* v *Mahaney*, 13 Mich 481 (1865), a literal application of the constitutional provision is not warranted, and one Act may incorporate another by reference if the latter Act is not changed. *Alan*, *supra*, at 274; 200 NW2d 659; and *Clay* v *Penoyer Creek Improvement Co*, 34 Mich 204 (1876).

Appellees, Township of Midland and Mr. Chatterton, claim that certain exceptions which have grown to surround the literal application of Const 1963, art 4, §25 are no longer applicable where inconsistent with the principles enunciated in *Alan*, pp 270-271; NW2d 657. In *Mok* v *Detroit Building & Savings Association, No. 4*, 30 Mich 511 (1875), the statute did more than merely reenact or adopt the other statute, it made changes, leaving the parties to fit them together as best they could. *Mok*, pp 521-522, 529, quoted in *Alan*, pp 272-273; NW2d 658-659. Further, 1970 PA 219 attempts to duplicate 1968 PA 190 (SBCA), but makes changes also in jurisdiction which renders the SBCA not complete within itself, creates exceptions to the jurisdictional grant and establishes certain procedures to be followed by the SBC which requires putting the two Acts together and figuring out as best as one can what has

been amended and what has not. They further assert that the specific words of Act 219 recognize this because it states in sub-section (1):

"In the event of a conflict between the provisions of this act and Act 191 of the Public Acts of 1968 • • • (SBCA) the provisions of act 191 • • • shall govern."

Plaintiffs also assert that in addition to violating the plain words of the Constitution, and violating the principles established in the cases of *Alan* and *Mok*, the enactment of 1970 PA 219 also violated the underlying purpose of that provision—by purporting to amend the HRCA while in fact amending the SBCA. The passage of Act 219 evidences precisely the deception that leads to the type of legislative inadvertence resulting in confusion that is the mischief designed to be prevented.

Appellants' argument that not one word of the SBCA was amended is disingenuous. Act 219 clearly assigned additional functions, duties and procedures to the SBC. It is not material whether an Act purports to amend another, but instead the question is whether in fact it alters or amends the other Act. Dissent of Justice POTTER in *People* v *Stimer*, 248 Mich 272, 282, 294; 266 NW 899, ..., ... (1929), adopted in *Alan*, p 278; NW2d 661. In order to learn of the SBC's jurisdiction and procedure in annexation cases, one must read an entirely different statute which is not even referred to in the SBCA. Not only can confusion result, but confusion has resulted. Indeed, if one wished to know the jurisdiction of the SBC over annexation, and looked at the SBCA, one would find not only no sections concerning annexation, but additionally that annexation is not even in the title of the Act.

We rule that the legislature has unconstitutionally attempted to amend SBCA (statute C) by putting in the HRCA (statute B) specific words to amend the SBCA (statute C) without republishing or reenacting the SBCA (statute C) contrary to *Mok* and *Alan*. The enactment of 1970 PA 219 was dissimilation rather than straightforwardness. The trial court correctly ruled on issue 1B and we refer to the trial court's opinion on the issue.

As to additional issues raised in the trial court and decided therein, we consider and determine them in the following manner.

II

Sufficiency of the criteria in 1968 PA 191 for guidance.

We adopt the ruling and reasoning of the trial court in its opinion on this issue. We note the finding that there was no showing of prejudice resulting to the plaintiffs.

III

The classification of "100 persons or less" provided in MCLA 117.9(4); MSA 5.2088(4), does not rest upon such a difference in situations or circumstances as to constitutionally permit such a division.

We rule that there is no valid issue here because in the instant petition concerning the 319 acres—there were no persons residing thereon. Under the former law or Act 219, which we determine to be unconstitutional, the rule governing the election would be the same. We also adopt the reasoning and ruling of the trial court on this issue.

IV

A district designed to exclude objecting voters is a gerrymander, and the SBC has a duty to take corrective action or to reject a gerrymandered petition.

We reject the argument and claims of the plaintiffs and adopt the reasoning and ruling by the trial court on this issue.

V

The failure of the SBC to promulgate rules as required by the Act and the Administrative Procedures Act.

We agree with the trial court that it would have been much better if the SBC had adopted rules and published them. In the absence of a showing of prejudice by plaintiffs, we agree with the trial court in its reasoning and ruling on this issue.

VI

The proceedings of the SBC are regulated by the contested case provisions of the Administrative Procedures Act, and failure to follow those provisions requires reversal of the determination.

The trial court ruled that there was no showing of prejudice resulting from the manner in which the proceedings were conducted by the SBC, and therefore no reversible error was present. We agree.

VII

The provisions of 1968 PA 261 were not observed and such failure renders the SBC findings reversible.

We rule that the trial court's reasoning and ruling on this issue was correct.

VIII

That the SBC ignored the criteria of Section 9 and substituted their own criteria for decision.

We adopt the reasoning and ruling of the trial court as contained in its opinion stated herein, concluding that it correctly disposes of the issue.

The decisions of the Ingham County Circuit Court are affirmed. No costs, a public question being involved.

EXHIBIT E

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF NOVI, Plaintiff-Cross Appellant, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, Cross Appellants. v. STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant, and CITY OF NOVI, a municipal corporation Intervening Defendant-Appellant, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 20227

TOWNSHIP OF NOVI, Plaintiff-Cross Appellant, and W. B. CHASE and CHASE MANOR FORMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, Cross Appellants, v. STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF NOVI, a municipal corporation, and GREGORY I. DONOVAN, et al, Intervening Defendants.	No. 20228

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees, Cross Appellants, v. MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF BRIGHTON, a Michigan municipal corporation, Intervening Defendant Appellant, and GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan, corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 20268

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TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees Cross Appellants, v. MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 20410

Before: McGregor, P. J., and T. M. Burns and N. J. Kaufman, JJ. T. M. Burns, J.

The cities of Novi and Brighton petitioned the State Boundary Commission (SBC) for annexation of lands lying within their respective townships. The SBC approved the petitions and issued orders accordingly.

The two townships sought to have the SBC orders declared void because the legislation conferring annexation jurisdiction upon the SBC is unconstitutional. The lower courts held for the townships. We granted leave to appeal.

Issues identical to those raised on this appeal have recently been decided by another panel of this Court in *Township of Midland* v *Michigan State Boundary Commission* (Docket Nos. 19154-56, released October 13, 1975). We agree with the holdings and reasoning of that opinion and herein follow it.

The SBC was created by the Boundary Commission Act (BCA)[1] in 1968. That legislation gave the commission jurisdiction over proceedings for the incorporation and consolidation of home rule cities. Matters concerning annexation were handled by the governing boards of the counties under the Home Rule Cities Act (HRCA).[2] In 1970, the HRCA was amended by 1970 PA 219, removing jurisdiction over annexations from the counties and giving such jurisdiction to the SBC. The principal issues on this appeal concern the constitutionality of 1970 PA 219.

In the City of Novi annexation dispute, the trial court found that:

1. The procedure followed by the Legislature in enacting 1970 PA 219 is violative of Const 1963, art 4, §24 and §25 because the matter of annexation is not mentioned in the titles of the HRCA and 1970 PA 219, and in enacting 1970 PA 219, the Legislature attempted to revise, alter or amend by reference to title only and without re-enacting and republishing.

2. The classification of "100 persons or less" in 1970 PA 219 is not based upon such a difference in situation or

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[1] MCLA 123.1001; MSA 5.2242(1)

[2] MCLA 117.1; MSA 5.2071

circumstance as to constitutionally permit such division as the basis for denying the right or privilege of referenda to some and granting it to others and accordingly violates Const 1963, art 1, §1 and §2.

In the City of Brighton case, the court below found as follows: (1) in enacting 1970 PA 219, the Legislature violated Const 1963, art 4, §24 and §25; (2) the classification of "100 persons or less" in 1970 PA 219 is not a valid classifica ion; (3) in conferring annexation authority to the SBC, the Legislature failed to set adequate standards for guiding the commission; and (4) the enactment of 1972 PA 362 does not cure the constitutional defects of 1970 PA 219.

Does 1970 PA 219 violate Const 1963, art 4 §24 and §25?

Section 24 provides:

> "No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

1970 PA 219 "embraced" as its object the removal of annexation authority from the counties and granting such authority to the SBC. The title to 1970 PA 219 read, however, as follows:

> "An ACT to amend section 9 of the Act 279 of the Public Acts of 1909, entitled as amended 'An act to provide for the incorporation of cities and for revising and amending their charters'***"

1970 PA 219 did indeed amend §9 of the HRCA. But it

went beyond "amending" and actually conferred authority on the SBC. There is nothing in the title to either the Home Rule Cities Act or 1970 PA 219 to advise anyone that the powers of the SBC were being rather dramatically enlarged. See *Township of Midland* v *Michigan State Boundary Commission*, Mich App ; NW2d (1975).

Const 1963, art 4, §25 provides as follows:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length."

The problem here, simply stated, is that the Legislature attempted to amend the BCA by putting into the Home Rule Cities Act specific words to amend the Boundary Commission Act. This issue was ably discussed in Township of *Midland, supra,* and we adopt Judge Holbrook's reasoning and the Court's conclusion that §25 was violated. The holdings of the lower court on this issue are affirmed.

Does the classification of "100 of less" persons as determining referendum rights constitute a violation of equal protection rights or Const 1963, art 1, §1?

This issue concerns a subsection of 1970 PA 219 [MCLA 117.9(4); MSA 5.2088(4)] which in part provides:

> "If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum."

Several arguments are presented as to how this classifica-

tion is unconstitutional or otherwise illegal. None are persuasive. The question of annexation is strictly a political one—a matter for the Legislature to regulate—and is not subject to constitutional prohibitions. *Detroit Edison Co* v *East China Twp School District No. 3*, 378 F2d 225 (CA 6, 1967). Even if it were, the classification based on population would be valid as having a rational basis. See *Tribett* v *Village of Marcellus*, 294 Mich 607; 293 NW 872 (1940). The holdings of the lower court on this issue are reversed.

Do the criteria set out in MCLA 123.1009; MSA 5.2242(9) [1968 PA 191] provide adequate guidance to the SBC?

We find no support for the Ingham Circuit Court's decision on this issue in the Brighton case. The act specifies numerous criteria to be considered by the SBC in deciding annexation questions. Compared to the criteria upheld by our Supreme Court in *Highway Commission* v *Vanderkloot*, 392 Mich 159; 220 NW2d 416 (1974), the criteria in this case are more than adequate and clearly are "as reasonably precise as the subject matter requires or permits." *Osius* v *St. Clair Shores*, 344 Mich 693, 698; 75 NW2d (1956). The holding of the lower court on this issue is reversed.

Were the constitutional defects in the Boundary Commission Act and the Home Rule Cities Act cured by 1972 PA 362?

By 1972 PA 362 the Legislature sought, but failed, to correct the constitutional defect in the Home Rule Cities Act as amended by 1970 PA 219. There was no republication of the HRCA as explicitly required by Const 1963, art 4, §25. The defects in 1970 PA 219 were not cured. The holding of the lower court on this issue is affirmed.

The issues relating to the Administrative Procedures Act, 1968 PA 261 and gerrymandering are answered by *Township of Midland* v *Michigan State Boundary Commission, supra.* We find no reason to differ with Judge Holbrook in his resolution of those issues.

The remaining issues are without merit.

Affirmed in part; reversed in part.

EXHIBIT F

MIDLAND TOWNSHIP v STATE BOUNDARY COMMISSION

MIDLAND TOWNSHIP v MIDLAND COUNTY BOARD OF COMMISSIONERS

NOVI TOWNSHIP v STATE BOUNDARY COMMISSION

BRIGHTON TOWNSHIP v STATE BOUNDARY COMMISSION

Docket Nos. 57720, 57732, 58223, 58236, 58242–58245. Argued June 7, 1977 (Calendar Nos. 1–6).—Decided October 24, 1977.

These appeals challenge the constitutionality of legislation which enables the State Boundary Commission to order township territory to be annexed to an adjoining city.

Midland Township and Robert B. Chatterton, a township supervisor, brought an action against the State Boundary Commission to set aside an annexation of township land to the City of Midland. The Ingham Circuit Court, Donald L. Reisig, J., granted summary judgment for the plaintiffs and found the legislation unconstitutional. The Midland Township plaintiffs also brought an action against the Midland County Board of Commissioners and others to restrain an annexation election called by the commissioners. The Midland Circuit Court, John X. Theiler, J., granted judgment for the defendants. The City of Midland intervened as a defendant in each case. The Court of

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REFERENCES FOR POINTS IN HEADNOTES

[1, 2, 4] 73 Am Jur 2d, Statutes § 100 *et seq.*

[3] 73 Am Jur 2d, Statutes § 119 *et seq.*

[5] 73 Am Jur 2d, Statutes § 130 *et seq.*

[6] 73 Am Jur 2d, Statutes § 426.

[7] 73 Am Jur 2d, Statutes § 392 *et seq.*

[8, 15] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 50, 51.

[9, 10] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 63.

[11, 17] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 70 *et seq.*

[12] 2 Am Jur 2d, Administrative Law § 633.

[13, 14] 2 Am Jur 2d, Administrative Law § 610 *et seq.*

[16, 18] 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 55 *et seq.*

Appeals, V. J. Brennan, P. J., and D. E. Holbrook and M. F. Cavanagh, JJ., affirmed the consolidated appeals (Docket Nos. 19154–19156, 20255). The plaintiffs and the State Boundary Commission appeal.

Novi Township, and Brighton Township and Muriel Beurmann, brought complaints challenging the approval by the State Boundary Commission of annexation of lands within the townships to the cities of Novi and Brighton, respectively. Owners of real property intervened as plaintiffs and defendants, and the cities of Novi and Brighton intervened as defendants in the suits. The Ingham Circuit Court, Jack W. Warren and Donald L. Reisig, JJ., granted judgments for the plaintiff townships and found the legislation unconstitutional. The Court of Appeals, McGregor, P. J., and T. M. Burns and N. J. Kaufman, JJ., affirmed in part and reversed in part (Docket Nos. 20227, 20228, 20268, 20410). The State Boundary Commission, the City of Novi, and the City of Brighton appeal. *Held:*

1. The title of the home rule cities act is sufficient under the Title-Body Clause of the Constitution to encompass provisions for change of city boundaries by annexation. An act providing for the functioning of a city covers many subjects which might have been dealt with in separate acts because the object of the act is necessarily broad-ranging and comprehensive. It is not consequential for purposes of the Title-Body Clause which agency is charged with implementation of a provision of the home rule cities act as long as the provision is germane to functioning of city government. Nor is it important that city annexation procedures might have been enacted in legislation creating the State Boundary Commission.

2. The Constitution does not require that the title of the home rule cities act, which by amending its annexation procedures amended by implication the 1968 act creating the State Boundary Commission, reflect the implied amendment or that the title of the boundary commission act reflect the implied amendment. The concept of implied amendment would be nullified if express amendment of the body or title of an impliedly amended statute were required. Additional powers and duties are often conferred by statute on public officials and agencies who derive their principal responsibility from other statutory provisions or from the Constitution without specific reference in the entitlement of the statute conferring additional powers and duties that the body of the statute provides. The Constitution does not require, nor would a useful purpose be served by, re-enacting and republishing the portions of §§ 6,

8, 8a, and 14 of the home rule cities act which were superseded by the 1970 amendment of § 9 of the act.

3. No city, village, township or person has any vested right or legally protected interest in the boundaries of a local governmental unit. The Legislature is free to change those boundaries at will. Legislation providing for a referendum where more than 100 persons reside in the territory to be annexed and denying a referendum where 100 persons or fewer reside in the territory does not violate the Equal Protection Clause because it provides a means appropriate to the resolution of disagreements concerning annexation of territory to a city. The challenged classification was not unreasonable and tends to prevent abuses which may occur if a small group of persons have the absolute power to prevent an annexation economically advantageous to other persons or to the community.

4. The challenged legislation delegates a power of the Legislature which is essentially political and does not involve any vested right or legally protected interest. The decision will be a value judgment based on the particular facts and circumstances of the annexation under consideration. It would unduly inhibit the exercise both of the Legislature's prerogative to delegate its power and the function of the State Boundary Commission to require greater particularity in the statutory criteria for deciding annexation questions than those in this legislation.

5. An annexation proceeding is not a "contested case" within the meaning of the Administrative Procedures Act, which was designed to provide procedural protection where a personal right, duty or privilege is at stake by an opportunity for an evidentiary hearing. Affording the public a right to be heard on an annexation decision at a public hearing before the State Boundary Commission does not create an implied substantive personal right in the decision. The judiciary, to avoid the risk of being drawn into an essentially political question in which no vested right or legally protected interest is involved, ought to be especially circumspect in reviewing determinations of the State Boundary Commission.

6. The State Boundary Commission may regard a particular statutory criterion to be of decisive importance, outweighing all other criteria. The commission's decision to "award the tax base" of a site for a proposed nuclear power plant to the City of Midland is supported by the record, is not arbitrary, and is consistent with the statutory criteria and the standard of reasonableness.

7. The State Boundary Commission may revise the boundaries described in a petition for annexation to include any land

which might originally have been included in the petition or to exclude land which was described in the petition, and there is no requirement that the parcels annexed be contiguous to each other, although any territory annexed to a city must adjoin the city. The commission applied an erroneous principle when it ruled that it could not revise the boundaries, as requested by Novi Township, to include a noncontiguous parcel, Brookland Farms Subdivision. The Novi Township petition is remanded so that the State Boundary Commission may consider whether to include the Brookland Farms Subdivision in the annexation.

8. The motive or purpose of a city in drawing the proposed boundaries so that the area contains fewer than 100 residents and thus the annexation will not be subject to referendum is not material, nor is the motive or purpose of a township in requesting a revision of boundaries so that the area has more than 100 residents; the question is whether the boundaries and the annexation are reasonable. The Legislature may reasonably determine that territory containing relatively few or no residents should be subject to annexation and that there is need for a classification based on population to preclude a referendum in such a case and to allow it where the territory to be annexed is more populous. The State Boundary Commission decisions approving the Midland, Novi and Brighton annexations with boundaries as proposed by the cities were not violative of the statutory standard, reasonableness.

9. The hearing before the State Boundary Commission was not a "public meeting" within the meaning of the former public meetings act.

10. Land which has been disconnected from a village under the farmland disconnection act may properly be annexed to a city. Disconnection is not necessarily permanent; new facts might arise which could render a disconnection order absolute. Exercise by the commission of the power to annex disconnected land does not constitute a collateral attack on the judgment of the circuit court disconnecting the land.

The decisions of the Court of Appeals are reversed.

64 Mich App 700; 236 NW2d 551 (1975) reversed.

67 Mich App 596; 242 NW2d 449 (1976) reversed.

1. MUNICIPAL CORPORATIONS—STATUTES—HOME RULE CITIES ACT—ANNEXATION—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

The title of the home rule cities act is sufficient under the Title-Body Clause of the Constitution to encompass provisions for change of city boundaries by annexation of territory (Const 1963, art 4, § 24; 1970 PA 219; MCL 117.9; MSA 5.2088).

2. STATUTES—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

The title of an act need not serve as an index of all that the act contains; the requirement of the Title-Body Clause of the Constitution is met if an act centers on one main general object or purpose which the title comprehensively declares, although in general terms, and if provisions in the body of the act not directly mentioned in the title are germane, auxiliary or incidental to that general purpose (Const 1963, art 4, § 24).

3. MUNICIPAL CORPORATIONS—STATUTES—HOME RULE CITIES ACT—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

An act providing for the functioning of a city covers many subjects which might have been dealt with in separate acts; the object of such an act is necessarily broad-ranging and comprehensive, and includes anything germane to the functioning of cities (Const 1963, art 4, § 24; MCL 78.1 *et seq.*; MSA 5.1511 *et seq.*).

4. MUNICIPAL CORPORATIONS—STATUTES—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE.

It is not consequential for purposes of the Title-Body Clause of the Constitution whether a city, county or state official or agency is charged by an act with implementation of a provision of the act so long as the provision is germane to the functioning of city government where the act centers on the functioning of city government and its title so indicates (Const 1963, art 4, § 24).

5. STATUTES—CONSTITUTIONAL LAW—TITLE-BODY CLAUSE—AMENDMENTS.

The Constitution does not require that the title of an act which amends another act by implication or the title of the act so amended reflect the implied amendment (Const 1963, art 4, § 24).

6. MUNICIPAL CORPORATIONS—STATUTES—HOME RULE CITIES ACT—STATE BOUNDARY COMMISSION—CONSTITUTIONAL LAW—REPUBLISHING CLAUSE.

The Constitution does not require reenacting and republishing portions of a statute which are repealed by implication or reenacting and republishing portions of the statute which remain viable; where an amendment to the home rule cities act, by its terms, does not change or dispense with any requirement of the act which created the State Boundary Commission but makes certain sections of the home rule cities act not applicable to certain annexations approved by the State Boundary Commission, it is not necessary to excise the portions of the

home rule cities act which are superseded or to reenact and republish the parts of the boundary commission act which are amended by implication (Const 1963, art 4, § 25; 1970 PA 219; MCL 117.9; MSA 5.2088).

7. STATUTES—CONSTITUTIONAL LAW—AMENDMENTS.

Ambiguities and constructional issues posed by a failure of the Legislature to repeal all laws concerning an entire subject when enacting amendatory legislation do not affect the validity of the legislation because of an asserted conflict between the provisions of different acts or sections of the same act on that subject.

8. MUNICIPAL CORPORATIONS—CONSTITUTIONAL LAW—BOUNDARIES—ANNEXATION.

No city, village, township or person has any vested right or legally protected interest in the boundaries of such governmental unit; a state's legislative body may at its pleasure expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation in the absolute discretion of the state, in conformity with the state Constitution, unrestrained by any provision of the Constitution of the United States.

9. MUNICIPAL CORPORATIONS—ANNEXATION—REFERENDUM—EQUAL PROTECTION.

A section of the home rule cities act which provides for a referendum where more than 100 persons reside in a territory to be annexed to a city and denies a referendum where 100 persons or fewer reside in the territory does not violate the Equal Protection Clause because it was not unreasonable and tends to prevent the abuses which may occur if a few persons have absolute power to prevent an annexation economically advantageous to other persons or to the community and thereby bears a substantial relation to the object of the legislation by providing a means to resolve disagreements concerning annexation (Const 1963, art 1, § 2; 1970 PA 219; MCL 117.9; MSA 5.2088).

10. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—DELEGATION.

Reasonableness, determined on the basis of statutorily enumerated criteria, is a sufficient guideline for the exercise of State Boundary Commission discretion in annexation proceedings; it would unduly inhibit the exercise both of the Legislature's prerogative to delegate the power to decide the political consid-

erations and the function of the State Boundary Commission to require greater particularity of the criteria (MCL 123.1008; MSA 5.2242[8]).

11. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—ADMINISTRATIVE LAW.

An annexation proceeding before the State Boundary Commission is not a "contested case" within the meaning of the Administrative Procedures Act; affording the public an opportunity to be heard on an annexation decision does not create a substantive personal right in the decision which requires procedural protection under the Administrative Procedures Act (MCL 24.203[3], 123.1004; MSA 3.560[103], 5.2242[4]).

12. ADMINISTRATIVE LAW—JUDICIAL REVIEW.

Judicial review of an administrative decision must be undertaken with due deference to administrative expertise without invading the province of exclusive administrative fact-finding by displacing a state agency's choice between two reasonably differing views (Const 1963, art 6, § 28; MCL 24.306; MSA 3.560[206]).

13. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—APPEAL AND ERROR.

The constitutional provision concerning judicial review of administrative action does not limit the proceedings of the State Boundary Commission in a annexation decision, which does not involve personal or private rights in the boundaries of cities, villages or townships (Const 1963, art 6, § 28).

14. MUNICIPAL CORPORATIONS—HOME RULE CITIES ACT—ANNEXATION—STATE BOUNDARY COMMISSION.

A decision of the State Boundary Commission to "award the tax base" of the site of a proposed nuclear power plant by annexation of township territory to the City of Midland is supported by the record, is not arbitrary, and is consistent with the statutory criteria for making annexation decisions and the standard of reasonableness (MCL 123.1008; MSA 5.2242[8]).

15. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION.

The State Boundary Commission may revise the boundaries set forth in an annexation petition to include any land which might originally have been included in the petition, which need not be adjacent to the land being annexed, although it must adjoin the city, or to exclude land which was included (MCL 123.1010; MSA 5.2242[10]).

16. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION.

The motive or purpose of a city or township in drawing the proposed boundaries for an annexation petition is not material to a decision by the State Boundary Commission if the boundaries as drawn or revised by the commission are reasonable.

17. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—PUBLIC MEETINGS ACT.

The procedures of the public meetings act are not applicable to a hearing before the State Boundary Commission on a petition for annexation (MCL 12.251; MSA 4.1800[1]).

18. MUNICIPAL CORPORATIONS—ANNEXATION—STATE BOUNDARY COMMISSION—FARMLAND DISCONNECTION ACT.

Land disconnected from a village by court order pursuant to the farmland disconnection act is subject to annexation by a city pursuant to an amendment of the home rule cities act; exercise by the State Boundary Commission of the power to annex disconnected land does not constitute a collateral attack on a judgment of the circuit court disconnecting the land (MCL 117.9, 123.31; MSA 5.2088, 5.3561).

Bauckham, Reed, Lang, Schaefer & Travis for Midland Township, Novi Township and Brighton Township.

William D. Sinclair for Midland Township and Robert B. Chatterton.

Frank J. Kelley, Attorney General, *Robert A. Derengoski,* Solicitor General, and *Milton I. Firestone* and *Craig Atchinson,* Assistants Attorney General, for State Boundary Commission.

David S. DeWitt, City Attorney, for City of Midland and Kenneth W. Lybolt.

Lewis C. Andrews, Jr., for City of Midland and City of Brighton.

Edward G. Durance for Midland County Board of Commissioners and Ben Penner.

Lampert & Fried (by *David M. Fried* and *Gary E. Levitt)* for City of Novi.

Charles S. Toy for Brighton Township.

John R. Brennan, City Attorney, for City of Brighton.

LEVIN, J. The State Boundary Commission was created to consider petitions for the incorporation and consolidation of cities and villages. Its powers were subsequently enlarged to include petitions for annexation of territory to a city.

In these actions, consolidated on appeal, townships from which the commission ordered territory detached and annexed to adjoining cities and persons residing in those townships challenge the constitutionality of the enabling legislation.

Court of Appeals panels, affirming judgments of the circuit courts, held the enabling legislation to be violative of the Title-Object and Reenact-Publish Clauses of the Constitution, but disallowed the other constitutional, procedural and substantive challenges of the townships. We reverse.

The enabling legislation is constitutional.[1] We agree with the Court of Appeals that the other

[1] In an apparent response to challenges to the 1968 enabling legislation, the title of that act and a new § 11a were added and other amendments were made by 1972 PA 362. The amended title provides:

"An act to create a state boundary commission; to prescribe its powers and duties; to provide for municipal incorporation, consolidation and annexation; and to repeal certain acts and parts of acts."

Section 11a provides:

"The commission shall have jurisdiction over petitions or resolutions for annexation as provided in section 9 of Act No. 279 of the Public Acts of 1909, as amended." MCLA 123.1011a; MSA 5.2242(11a).

Our disposition makes it unnecessary to consider the townships' contentions that these amendments do not cure the constitutional infirmity of the 1970 amendment as it relates to the 1968 act and the home rule cities act, and that such amendments can only operate prospectively from the January 9, 1973 effective date of 1972 PA 362.

challenges should be denied except that the commission's adoption of an erroneous principle in the Novi annexation requires remand to it of the petition in that case.

After the circuit court had set aside the Midland annexation ordered by the commission, the annexation procedures of prior law were invoked. Midland Township then challenged annexation under those procedures; the circuit court rejected that challenge and the Court of Appeals affirmed. The issues raised in that challenge need not be further considered because the enabling legislation (here held to be constitutional) by its terms supersedes the procedures of prior law.

I

Before creation of the State Boundary Commission, the procedures for the incorporation, consolidation or alteration of boundaries of cities were set forth in the home rule cities act.[2] By enactment separate from that act, the commission was created in 1968 with authority limited to incorporation and consolidation of cities and villages.[3] The powers of the commission were extended to annexations by a 1970 amendment of the annexation procedures of the home rule cities act.[4]

The 1970 amendment is entitled: "AN ACT to amend section 9 of [the home rule cities act], entitled, as amended 'An act to provide for the incorporation of cities and for revising and amending their charters' ".

In holding the 1970 amendment violative of the Title-Object Clause, the Court of Appeals reasoned

[2] 1909 PA 279; MCLA 117.1 *et seq.;* MSA 5.2071 *et seq.*

[3] 1968 PA 191; MCLA 123.1001 *et seq.;* MSA 5.2242(1) *et seq.*

[4] 1970 PA 219; MCLA 117.9; MSA 5.2088.

that while the title of the home rule cities act "is sufficient to encompass the annexation authority of cities" it was not "sufficient to encompass the subject of the annexation jurisdiction of an entirely separate state agency".[5]

A

The Title-Object Clause provides:

"No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title." Const 1963, art 4, § 24.

The question whether the title of the home rule cities act is sufficient to encompass annexation procedures was resolved in *Village of Kingsford v Cudlip,* 258 Mich 144; 241 NW 793 (1932), where this Court considered the question in the context of annexation of township territory to a village under a village governance act.[6] The Court observed that the title of the home rule cities act

[5] *Midland Twp v State Boundary Commission,* 64 Mich App 700, 718; 236 NW2d 551 (1975).

The other panel of the Court of Appeals, in the Novi and Brighton appeals, reasoned similarly:

"1970 PA 219 'embraced' as its object the removal of annexation authority from the counties and granting such authority to the SBC.

• • •

"1970 PA 219 did indeed amend § 9 of the HRCA. But it went beyond 'amending' and actually conferred authority on the SBC. There is nothing in the title to either the home rule cities act or 1970 PA 219 to advise anyone that the powers of the SBC were being rather dramatically enlarged. See *Midland Twp v State Boundary Commission,* 64 Mich App 700; 236 NW2d 551 (1975)." *Twp of Novi v State Boundary Commission,* 67 Mich App 596, 599–600; 242 NW2d 449 (1976).

[6] 1909 PA 278; MCLA 78.1 *et seq.;* MSA 5.1511 *et seq.*

and the village act were identical—except that one speaks of the incorporation of "cities" and the other of "villages"—and declared:

"Both of these acts have been many times before this court, and, so far as we have been able to discover, this is the first time the sufficiency of the present titles has been assailed. Both the legislature and the courts have treated these titles as sufficient to sustain the provisions for change of boundaries. The necessity of such changes from time to time is apparent, and in our opinion the power conferred upon the legislature by the Constitution 'to provide by a general law for the incorporation' may fairly be said to include the change of boundaries when needed." *Id,* 151–152.[7]

Village of Kingsford was followed in *Hall v Calhoun County Board of Supervisors,* 373 Mich 642, 647; 130 NW2d 414 (1964), approving annexation pursuant to the procedures of the home rule cities act of one city by another against a contention that "this would amount to a disincorporation of the annexed city, and the title of the [home rule cities act] has reference to the incorporation only":

"We have said that the act's title is broad enough to encompass annexation, *Village of Kingsford v Cudlip,* 258 Mich 144, 151, 152, and this being so we are not prepared to say that it is not broad enough to encompass annexation of a city. We are committed to a liberal interpretation of the constitutional provision concerning titles of legislative enactments." *Id,* p 648.

[7] As originally enacted, the title of the village act and of the home rule cities act began: "An act to provide for the incorporation of" villages/cities and concluded "and for changing their boundaries". By amendments in 1913 (1913 PA 95 as to villages, 1913 PA 5 as to cities), "and for changing their boundaries" was replaced with "and for revising and amending their charters". The 1913 amendments did not, however, change the annexation provisions of either act. The Court rejected a contention that the change in the title rendered invalid formerly valid annexation provisions.

Acknowledging that *Village of Kingsford* and *Hall* establish that the title of the home rule cities act is sufficient to encompass annexation procedures, the townships contend that those cases have been superseded by *Alan v Wayne County,* 388 Mich 210; 200 NW2d 628; 67 ALR3d 1079 (1972), where this Court declared that if it were intended by the building authority act,[8] as amended, "as defendants claim, to permit taxation without limitation to pay fixed rentals, then [the body of that act] exceeds the scope of the title", because the title of that act limits the body to "the issuance of revenue bonds by such authorities". *Id,* pp 257, 358.

The Title-Object issue in *Alan* was different from the issue here presented of the sufficiency of the title. The issue in *Alan* was whether the body of the act exceeded the scope of the title, "speaking," as expressed in *People v Stanton,* 400 Mich 192, 195; 253 NW2d 650 (1977), "more broadly than its restrictively-speaking title". Similarly, see *Maki v East Tawas,* 385 Mich 151; 188 NW2d 593 (1971).

Where the issue is the sufficiency of the notice provided by the title, it is "established that the title need not serve as an index of all that the act contains". *People v Milton,* 393 Mich 234, 246–247; 224 NW2d 266 (1974).

"An abridgment of all those sections is not essential to a sufficient title. While it contains various related provisions not directly indicated or enumerated in the title, under the construction of this constitutional requirement, as many times reviewed by this court, *if the act centers to one main general object or purpose which the title comprehensively declares,* though in general terms, and if provisions in the body of the act not

[8] 1948 (1st Ex Sess) PA 31; MCLA 123.951 *et seq.;* MSA 5.301(1) *et seq.* Title amended by 1973 PA 110.

directly mentioned in the title are germane, auxiliary, or incidental to that general purpose, the constitutional requirement is met." *Loomis v Rogers,* 197 Mich 265, 271; 163 NW 1018 (1917) (emphasis supplied).

As with codifications,[9] an act providing for the functioning of a city covers many subjects which might have been dealt with in separate acts. The object of such an act is necessarily broad-ranging and comprehensive. "The home rule act and other acts providing for the incorporation of cities and other units of local government have been interpreted as having as their object anything germane to their functioning." *Detroit Board of Street Railway Commissioners v Wayne County,* 18 Mich App 614, 623; 171 NW2d 669 (1969).

B

Whether a provision is germane depends on its relationship to the object of the act, not who is charged with implementing the provision. Although an act centers on the functioning of city government and its title so indicates, it is not consequential for purposes of the Title-Object Clause whether a city, county or state official or agency is charged by the act with participation in implementation of a provision of the act as long as the provision to be implemented is germane to the functioning of city government.

Nor is it of any importance that city annexation procedures, before and after the 1970 amendment set forth in the home rule cities act, might have been located in the enabling act creating the com-

[9] *See Regents of the University of Michigan v Pray,* 264 Mich 693, 697; 251 NW 348 (1933); *People v Milton,* 393 Mich 234, 248; 224 NW2d 266 (1974).

mission. Paraphrasing *People v Milton, supra,* p 248, the correct question is not whether the Legislature might have included provisions concerning city annexation procedures in the 1968 act but whether such provisions and procedures are germane to the purpose of the home rule cities act. There is " 'no constitutional requirement that the legislature do a tidy job in legislating. * * * The constitutional requirement is satisfied if the bits and pieces so enacted are embraced in the object expressed in the title of the amendatory act and the act being amended' ". *Id,* p 242.

The further contention of the townships that the title of the 1970 amendment should have indicated that it was "effectually amending" the 1968 enabling act and that the title of that act should similarly have been amended is predicated on the erroneous premise that the 1970 amendment of the home rule cities act amended the 1968 act. Although the powers and duties of the commission were enlarged by the 1970 amendment, that was accomplished by amendment of the home rule cities act without amendment of the 1968 act which created the commission.

The Constitution does not require that the title of an act which amends another act by implication or the title of the act so amended reflect the amendment so implied; manifestly the concept of implied amendment would be nullified if express amendment of the body or title of an impliedly amended statute were required.

Perusal of the contents of the home rule cities act indicates that a narrow construction of this constitutional limitation and of the title of that act might render a number of its provisions unconstitutional.

It is, similarly, apparent on examination of the

statutes generally[10] that additional powers and duties are often conferred on public officials and agencies who derive their principal responsibility from other statutory provisions or from the Constitution without specific reference in the entitlement of the statute conferring such additional powers and duties that the body of the statute provides.

The Court of Appeals erred in holding that the title of an act concerning the governance of a city must directly indicate that the body of the act confers authority on a state agency.

On the authority of *Village of Kingsford* and *Hall,* we hold that procedures for the annexation of territory to a city are germane to the functioning of a city and that the procedures provided for in the 1970 amendment are embraced in the object expressed in the titles of the 1970 amendment and of the home rule cities act.

II

The townships contend that the "failure of the Legislature to reenact and publish at length §§ 6, 8, 8a and 14 of the Home Rule Cities Act * * * which were amended by implication" and to ree-

[10] The following are examples of statutes which confer duties upon officers or agencies not mentioned in the title who derive their principal powers from other statutes; it is also noteworthy that the statutes were enacted without reenactment and publication of the statutes conferring the powers *(see* part II):

1967 PA 288; MCLA 560.101 *et seq.;* MSA 26.430(101) *et seq.,* the Subdivision Control Act of 1967, confers duties upon county platting boards, state, city and county health departments, county drain commissions, the departments of state highways and treasury, the water resources commission, county road commissions, state conservation department, state treasurer and other state and county administrative agencies.

1972 PA 346, MCLA 281.951 *et seq.;* MSA 11.475(1) *et seq.,* the Inland Lakes and Streams Act of 1972, confers duties upon the Department of Natural Resources and the Natural Resources Commission.

nact and republish the "portions of the state boundary commission act amended by implication" by the 1970 amendment is violative of the Reenact-Publish Clause, which provides:

> "No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length." Const 1963, art 4, § 25.

The Court of Appeals, agreeing with the townships, ruled that the Legislature had unconstitutionally attempted to amend the 1968 act by putting in the home rule cities act specific words to amend the 1968 act without reenacting and republishing the 1968 act "contrary to *Mok [v Detroit Building & Savings Ass'n No 4,* 30 Mich 511 (1875)] and *Alan*".[11]

A

In *Mok,* this Court held unconstitutional an 1869 act providing for the incorporation of building and savings associations by reference to an 1855 act (consisting of 12 lines including its title) for the formation of corporations for building and leasing houses and other tenements which in turn referred for its substance to an 1853 act authorizing the formation of corporations for mining, smelting or manufacturing purposes. The Court declared that the 1869 act incorporated the 1853 act by reference and *expressly* changed the provisions so incorporated: Section 4 of the 1853 act required that the articles of association state the

[11] *Midland Twp v State Boundary Commission, supra,* p 720; the other panel of the Court of Appeals declared "that the Legislature attempted to amend the [1968 act] by putting into the home rule cities act specific words to amend the boundary commission act". *Novi Twp v State Boundary Commission, supra,* p 600.

amount of capital stock actually paid in;[12] the 1869 act provided that the articles required by § 3 of that act "need not state the amount of capital stock actually paid in".[13]

The 1869 act added to the requirements of §§ 4 and 5 of the 1853 act by express reference to those sections.[14]

The Court declared that those provisions and references were express amendments of provisions of the act incorporated by reference and were violative of the constitutional limitation:

> "Amendments of statutes by implication, we have held, are not forbidden by [the constitution]: *People [ex rel Drake] v Mahaney,* 13 Mich 481 [1865]; *Underwood v McDuffee,* 15 Mich 361 [1867]. But this is not a case of that nature, as *all the alterations* we have reason to suppose the legislature designed to make in the act of 1853, to adapt it to the purposes of the act of 1869, *are made in express terms.*
>
> • • •
>
> "While the act of 1853 is left untouched as to the organizations contemplated by its provisions, it is, for the purposes of building and savings associations, altered in most important particulars in disregard of the constitutional requirement. The fourth and fifth sections are *expressly* amended without re-enacting them in full, and perhaps the same should be said of the eleventh, while the others are capable of being made available only by treating the act as revised to meet the exigencies of the case." *Mok v Detroit Building & Savings Ass'n No 4, supra,* pp 522, 529 (emphasis supplied).

[12] 1853 PA 41; 1857 CL 1802.

[13] 1869 PA 152, § 1; 1871 CL 2822.

[14] 1869 PA 152, §§ 4, 5; 1871 CL 2825, 2826.

"Sec. 4. The articles of association shall state, in addition to the requirements of section four of said chapter sixty-three • • • ."

"Sec. 5. In addition to the facts required to be reported by section five, of said chapter sixty-three, the said corporation shall report • • • "

In *Alan v Wayne County, supra,* this Court considered a provision of the building authority act[15] authorizing an authority to issue self-liquidating bonds in accordance with and subject to the provisions of the Revenue Bond Act.[16] The Court declared that an act that amended the building authority act, "if it purported to substitute full faith and credit for the normal revenue from the property as the source of payment for the authorized bonds," would offend the Reenact-Publish Clause because it did not reenact and publish at length any part of the Revenue Bond Act as well as the building authority act so amended. "This is because [the building authority act] incorporates [a provision of the Revenue Bond Act] by reference * * * and therefore under *Mok, supra,* anything [in the building authority act] or any act to amend [the building authority act] that purports 'to dispense with something required by that Act [the Revenue Bond Act], and to make some changes'[17] offends Const 1963, art 4, § 25." *Alan, supra,* pp 265–266.

The Reenact-Publish question in *Alan* arose from the incorporation of a provision of the Revenue Bond Act into the building authority act and amending the provision so incorporated which had not been reenacted and republished.

In the instant cases, the 1970 amendment of the home rule cities act, while incorporating by reference provisions of the 1968 act, does not "dispense with" or "change" any provision of the 1968 act.

[15] *See* fn 8, *supra.*

[16] 1933 PA 94; MCLA 141.101 *et seq;* MSA 5.2731 *et seq.*

[17] "But while the act of 1869 referred parties in this circuitous manner to that of 1853 for the requirements in organization, it undertook at the same time to dispense with some things required by that act, and to make some changes." *Mok v Detroit Building & Savings Ass'n No 4,* 30 Mich 511, 521 (1875).

The 1970 amendment provides that the commission, in acting on petitions for annexation, has "the same powers and duties" and is to proceed "in accordance with and subject to" the 1968 act.[18] Further, the 1970 amendment provides that in the event of a "conflict between the provisions of this act" and the 1968 act, *the provisions of the 1968 act "shall govern".*[19] By its terms, the 1970 amendment makes no change or dispensation of any requirement of the 1968 act.

While the 1970 amendment provides for resolution of conflicts between it and the 1968 act—the incorporated act, the 1968 act, "shall govern"—the procedures to be followed appear to be straightforward and uncomplicated. The commission, established under the 1968 act, is to process petitions

[18] "Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations." MCLA 117.9(2); MSA 5.2088(2).

[19] "In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Complied Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern. The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed. However, when a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state administrative board which holds the record legal title to the entire area of the land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township." MCLA 117.9(1); MSA 5.2088(1).

for annexation in accordance with the provisions of the 1968 act "relating to petitions which propose incorporations". The 1970 amendment, additionally, supplements the provisions relating to incorporations of the 1968 act with provisions peculiar to annexation. The 1970 amendment does not, expressly or otherwise, dispense with or change the provisions of the 1968 act incorporated into the home rule cities act; in contrast with *Mok,* there is no express amendment of the 1968 act.

B

The 1970 amendment provides that the provisions of §§ 8 and 8a of the home rule cities act "shall not be applicable" to petitions or resolutions filed with the commission, that the provisions of § 14 of the home rule cities act "shall not be applicable" to certain annexations approved by the commission except as in the 1970 amendment provided, and that from the effective date of the 1970 amendment and so long as the 1968 act is in effect "annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective".[20]

In *People ex rel Drake v Mahaney,* 13 Mich 481, 496 (1865), the act before this Court had "an amendatory effect by implication, and by its last section repeals all inconsistent acts".[21] The act repealed specific sections of certain acts and "all acts and parts of acts inconsistent with the provisions of this act". Rejecting the contention that the act violated the Reenact-Publish Clause, this Court said:

[20] MCLA 117.9(9)–117.9(11); MSA 5.2088(9)–5.2088(11).

[21] 1865 PA 78, § 38.

"We are unable to see how this conflicts with the provision referred to. If, whenever a new statute is passed, it is necessary that all prior statutes, modified by it by implication should be re-enacted and published at length as modified, then a large portion of the whole code of laws of the state would require to be republished at every session, and parts of it several times over, until, from mere immensity of material, it would be impossible to tell what the law was. If, because an act establishing a police government modifies the powers and duties of sheriffs, constables, water and sewer commissioners, marshals, mayors and justices, and imposes new duties upon the executive and the citizen, it has thereby become necessary to re-enact and republish the various laws relating to them all as now modified, we shall find, before the act is completed, that it not only embraces a large portion of the general laws of the state, but also that it has become obnoxious to the other provisions referred to, because embracing a large number of objects, only one of which can be covered by its title." *Id,* pp 496–497.

Sections 6, 8, 8a, 9 and 14 appear *seriatim* in the home rule cities act. It is not uncommon for one section of an act to modify, expressly or by implication, another section of the same act. Any amendment of a section of an act may affect other sections of the same act (or indeed of another act) which are not amended, but it has never been thought necessary on that account to reenact the entire act (or other act).

On the same principle that makes it unnecessary to enumerate "all acts and parts of acts inconsistent" *(Mahaney, supra)* with the provision of a superseding act, there was no need to excise the portions of §§ 6, 8, 8a and 14 superseded by the 1970 amendment of § 9.

The Constitution does not require, nor would a useful purpose be served by reenacting and republishing the defunct portions of §§ 6, 8, 8a and 14;

the Constitution does not require a useless gesture. Nor does it require that the defunct portions be excised from those sections and the viable portions reenacted and republished. *People ex rel Drake v Mahaney, supra; Mok v Detroit Building & Savings Ass'n No 4, supra; Alan v Wayne County, supra.*

While this non-express method of legislating may be "confusing" to some and appear to be "lazy", legislation cannot on that ground be invalidated.[22]

The townships further assert that there are a number of ambiguities and constructional issues posed by the failure of the Legislature to repeal all the laws concerning incorporation, consolidation and annexation and to start afresh with a comprehensive enactment covering the entire subject matter. Experience teaches that ambiguities and constructional difficulties are inevitable however carefully the Legislature proceeds. Those difficulties do not rise to constitutional dimensions affecting the validity of legislation because they are posed in terms of asserted conflict between the provisions of different acts or sections of the same act as a result of an amending act. If legislation could so easily be overturned, the claims of confusion, lazy legislation and conflict between sections and acts would be an increasing source of litigation, burden and embarrassment to the courts, the Legislature and the public.

III

The townships and individual plaintiffs additionally contend:

A. The 1968 act denies equal protection of the

[22] *See* fn 10, *supra*.

laws to persons residing in an area containing 100 persons or fewer, who are denied a referendum on a commission order although a referendum is required where more than 100 persons reside in the area;

B. The 1968 act does not provide adequate standards;

C. Proceedings before the commission are a "contested case" within the meaning of the Administrative Procedures Act, and the provisions of that act were not followed;

D. The cities gerrymandered the boundaries to avoid a referendum, and a review of the record in light of the statutory criteria demonstrates that the evidence does not "substantially" support the commission's rulings or its determinations that the annexations were reasonable and should be approved.[23]

These contentions ignore the unique nature of annexation proceedings. No city, village, township or person has any vested right or legally protected interest in the boundaries of such governmental units. The Legislature is free to change city, village and township boundaries at will. This was settled for Federal constitutional purposes in *Hunter v Pittsburgh,* 207 US 161, 178–179; 28 S Ct 40; 52 L Ed 151 (1907), and the principles there established have been observed in subsequent litigation in the courts of this and other states. See *Village of Kingsford v Cudlip, supra,* p 148. Similarly, see *Lansing School District v State Board of Education,* 367 Mich 591; 116 NW2d 866 (1962);

[23] The townships further contend that in the Midland case the commission failed to base its decision on the criteria of the 1968 act; in the Brighton case the commission's refusal to revise the boundaries to include the balance of the so-called BUGA area was not supported by the evidence, contrary to Const 1963, art 6, § 28; and in the Novi case the commission's refusal to revise the boundaries consolidating the two Novi petitions was contrary to law.

The Detroit Edison Co v East China Twp School Dist No 3, 247 F Supp 296 (ED Mich, 1965), *aff'd* 378 F2d 225 (CA 6, 1967); 56 Am Jur 2d, Municipal Corporations, § 50, p 108 and § 57, p 113.

In *Hunter* the City of Pittsburgh had annexed the City of Allegheny. The statute provided for a referendum with the votes of both cities being aggregated. Pittsburgh, larger than Allegheny, voted in favor of annexation and Allegheny voted against it. Allegheny residents claimed that the procedures violated the Due Process Clause. The Court responded that the Legislature could have constitutionally changed the boundaries without an election:

"Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do

as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it." *Id,* pp 178–179.

A. EQUAL PROTECTION

In the instant annexations fewer than 100 persons resided in the territories to be annexed.

The townships and individual plaintiffs, acknowledging the principles enunciated in *Hunter,* assert that while the Legislature may provide for annexation without an election it is violative of the Equal Protection Clause to provide for a referendum where more than 100 persons reside in the territory to be annexed and deny a referendum where 100 persons or fewer reside in the territory.

In *Detroit Edison Co v East China Twp School Dist No 3, supra,* where it was contended that a school district should have proceeded by consolidation (subject to referendum in the annexing and annexed districts) rather than annexation (not subject to referendum in the annexing district), the district court rejected an equal protection challenge. The Court of Appeals affirmed based on the abstention doctrine, adding that the district court was correct on the merits. Similarly see *Lansing School Dist v State Board of Education, supra,* p 599.

We are of the opinion that the challenged classi-

fication bears a substantial relation to the object of the legislation:[24] providing a means appropriate to the resolution of disagreements concerning annexation of territory to a city.[25]

Some territory annexed will be sparsely populated or unpopulated while other territory will be more heavily populated. The challenged classification, responsive to that factual difference, tends to prevent venal abuses which there is reason to believe may occur if few persons (or a small group of persons) have absolute power to prevent an annexation economically advantageous to other persons or the community at large.[26] See *Weber v Thousand Oaks City Council,* 9 Cal 3d 950; 109 Cal Rptr 553; 513 P2d 601 (1973), sustaining against an equal protection challenge a classification providing for a referendum if the area has more than 12 resident registered votes but dispensing with a referendum where there are fewer voters. It was not violative of the Equal Protection Clause to draw a line, and the line drawn (at 100) was not unreasonable.

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[24] *Manistee Bank & Trust Co v McGowan,* 394 Mich 655, 668; 232 NW2d 636 (1975).

[25] In so holding we do not reach the city contention that the Equal Protection Clause does not apply to an annexation.

[26] If more than 100 persons reside in the territory to be annexed and a petition containing the signatures of at least 25% of the registered voters residing in that territory, in the annexing city, or in the balance of the township, is filed, the commission is required to order a referendum on the question of annexation to be held in each area for which a valid petition is filed. If a majority of the voters voting on the question in each area in which a referendum is held, voting separately, approves the annexation, the annexation becomes effective, otherwise it does not take effect. MCLA 117.9(5); MSA 5.2088(5).

The challenged classification is based on the number of persons residing in the area, not the number of voters. The number of registered voters in the area to be annexed will perforce be considerably fewer than 100 and the number voting in an election is likely to be far fewer than the number registered to vote; a majority of those voting may be as few as 20 or even fewer.

B. STANDARDS

The 1968 act, as incorporated in the home rule cities act by the 1970 amendment,[27] provides for a public hearing at which the Commission shall consider the "reasonableness" of the proposed annexation based upon the "criteria" set forth in § 9 of the 1968 act:

"Criteria to be considered by the commission in arriving at a determination shall be:

"(a) Population; population density; land area and land uses; assessed valuation; topography, natural boundaries and drainage basins; the past and probable future urban growth, including population increase and business, commercial and industrial development in the area. Comparative data for the incorporating municipality, and the remaining portion of the unit from which the area will be detached shall be considered.

"(b) Need for organized community services; the present cost and adequacy of governmental services in the area to be incorporated; the probable future needs for services; the practicability of supplying such services in the area to be incorporated; the probable effect of the proposed incorporation and of alternative courses of action on the cost and adequacy of services in the area to be incorporated and on the remaining portion of the unit from which the area will be detached; the probable increase in taxes in the area to be incorporated in relation to the benefits expected to accrue from incorporation; and the financial ability of the incorporating municipality to maintain urban type services in the area.

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[27] "The commission shall review proposed incorporations taking into consideration the criteria established by section 9. * * * [T]he commission shall hold a public hearing at some convenient place in the area proposed to be incorporated, at which public hearing the reasonableness of the proposed incorporation based upon the criteria established in this act shall be considered. * * *." 1968 PA 191; MCLA 123.1008; MSA 5.2242(8).

1970 PA 219. *See* fn 18, *supra,* for text of MCLA 117.9(2); MSA 5.2088(2).

"(c) The general effect upon the entire community of the proposed action; and the relationship of the proposed action to any established city, village, township, county or regional land use plan." 1968 PA 191; MCLA 123.1009; MSA 5.2242(9).

In *State Highway Commission v Vanderkloot*, 392 Mich 159, 166; 220 NW2d 416 (1974), this Court held "that the standard 'necessity' in the context of the highway condemnation act is a sufficient standard and a constitutional delegation of authority". We similarly conclude that "reasonableness," determined based on the statutorily enumerated criteria, is a sufficient guideline for the exercise of commission discretion.[28]

In this context it is again relevant that the power here delegated does not involve any vested right or legally protected interest. We judge the adequacy of the criteria and standard with that in mind.[29] The annexation question is essentially political, and political considerations cannot be avoided whether the power is exercised by the Legislature itself or by an authority to which the power is delegated. The ultimate decision will be a value judgment based on the particular facts and circumstances of the annexation under consideration. It would unduly inhibit both the exercise of the Legislature's prerogative to delegate the power to decide on annexations and the function of the commission to require greater particularity in the explication of criteria or standards.

[28] In *Osius v St Clair Shores*, 344 Mich 693, 698; 75 NW2d 25; 58 ALR2d 1079 (1956), where the Court indicated that "the standards prescribed for guidance [should be] as reasonably precise as the subject matter requires or permits," no standard had been prescribed. *See Florka v Detroit*, 369 Mich 568, 581; 120 NW2d 797 (1963).

[29] Our conclusion makes it unnecessary to readdress the non-delegation/standards doctrine. *See People v Fields (On Rehearing)*, 391 Mich 206, 224; 216 NW2d 51 (1974) (LEVIN, J., dissenting); *People v Peters*, 397 Mich 360, 368; 244 NW2d 898 (1976).

C. CONTESTED CASE

The townships contend that the procedures for contested cases of the Administrative Procedures Act of 1969 apply to commission proceedings and that those procedures were not followed in these annexation proceedings.[30] That act provides:

" 'Contested case' means a proceeding, including but not limited to rate-making, price-fixing and licensing, in which a determination of the *legal rights*, duties or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and the appeal are deemed to be a continuous proceeding as though before a single agency." 1969 PA 306; MCLA 24.203(3); MSA 3.560(103)(3) (emphasis supplied).[31]

We have already expressed our conclusion, based on the *Hunter* principle, that no governmental

[30] The 1968 act provides (MCLA 123.1004; MSA 5.2242[4]) for a public hearing and requires the state members of the commission to make rules and regulations and prescribe procedures, including rules for public hearings; such rules and regulations are required to be promulgated in accordance with the administrative procedures acts, 1943 PA 88, MCLA 24.71 *et seq.*; MSA 3.560(7) *et seq.* and 1952 PA 197, MCLA 24.101 *et seq.*; MSA 3.560(21.1) *et seq.* The 1968 act further provides (MCLA 123.1018; MSA 5.2242[18]) that every final decision of the commission shall be subject to judicial review in a manner prescribed in the 1952 act. The 1952 act was superseded by the Administrative Procedures Act of 1969, 1969 PA 306; MCLA 24.201 *et seq.*; MSA 3.560(101) *et seq.*

Subsequent to the instant annexation hearings the commission promulgated general rules which seek to secure the right to a public hearing provided by the 1968 act (1974 AACS, R 123.1 *et seq.*).

[31] "Contested case" was defined in the 1952 Administrative Procedures Act, extant when the 1968 act was enacted as follows:

"(3) 'Contested case' means a proceeding before an agency in which the legal rights, duties or privileges of a specific party or specific parties are required by law or constitutional right to be determined after an opportunity for an agency hearing." MCLA 24.101; MSA 3.560(21.1).

authority or person has any legal right in the boundaries of a city, village or township. An annexation proceeding is not a "contested case" even though the commission must hold a public hearing and representatives of a city, village or township and other persons have a right to be heard at such a hearing before the commission makes its determination. That procedural right does not create any substantive legal right in a "named party" and, hence, the "legal rights" of a "named party" are not required by the 1968 act and the 1970 amendment to be determined after an opportunity for an evidentiary hearing within the meaning of the Administrative Procedures Act.

The Administrative Procedures Act was designed to provide procedural protection where a personal right, duty or privilege is at stake. Affording the public at large an opportunity to be heard does not create a personal right in the decision; certain decisions are so largely legislative in character, affecting the populace at large without differentiation and not fundamentally a particular person or persons, that no substantive personal right is to be implied from the opportunity to be heard.[32]

D. JUDICIAL REVIEW

The 1968 act provides for judicial review pursu-

[32] *See Scarlett v Jackson Town Council, Teton County,* 463 P2d 26 (Wyo, 1969); *Sherwin v State Highway Commissioner,* 364 Mich 188, 196; 111 NW2d 56 (1961).

Compare Emmet County v State Tax Commission, 397 Mich 550; 244 NW2d 909 (1976), where this Court held that inter-county equalization was not a "contested case" within the meaning of the Administrative Procedures Act although the inter-county equalization statute provides for a hearing. MCLA 209.4; MSA 7.604.

See, generally, 1 Davis, Administrative Law Treatise, § 7.04, p 420 and § 7.06, p 429.

ant to the Administrative Procedures Act.[33] The townships additionally rely on the constitutional provision for judicial review of administrative action.[34]

The Administrative Procedures Act provides for judicial review of errors of law and, paralleling the constitutional provision, for a determination whether the administrative action is supported by "competent, material and substantial evidence on the whole record". MCLA 24.306(d); MSA 3.560(206)(d).

The key phrase "substantial evidence" has been construed by this Court to require

"a thorough judicial review of administrative deci-

[33] *See* fn 30, *supra.*

The Administrative Procedures Act provides:

"(1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

"(a) In violation of the constitution or a statute.

"(b) In excess of the statutory authority or jurisdiction of the agency.

"(c) Made upon unlawful procedure resulting in material prejudice to a party.

"(d) Not supported by competent, material and substantial evidence on the whole record.

"(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

"(f) Affected by other substantial and material error of law.

"(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings." 1969 PA 306, § 106; MCLA 24.306; MSA 3.560(206).

[34] "All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law." Const 1963, art 6, § 28.

sion, a review which considers the whole record—that is, both sides of the record—not just those portions of the record supporting the findings of the administrative agency. Although such a review does not attain the status of *de novo* review, it necessarily entails a degree of qualitative and quantitative evaluation of evidence considered by an agency. Such review must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views. Cognizant of these concerns, the courts must walk the tightrope of duty which requires judges to provide the prescribed meaningful review." *Michigan Employment Relations Commission v Detroit Symphony Orchestra, Inc,* 393 Mich 116, 124; 223 NW2d 283 (1974).

The townships contend that to avoid a referendum the cities gerrymandered the boundary of the territory to be annexed so that the number of residents would not exceed 100, and that a review of the record in light of the statutory criteria demonstrates that the evidence does not "substantially" support the commission's rulings or its determinations that the annexations were reasonable and should be approved.

It is again pertinent that there are no "private rights" (see footnote 34) in the boundaries of cities, villages or townships; accordingly, the constitutional provision concerning judicial review of administrative action does not limit commission proceedings.

Resolution of a controverted annexation unavoidably involves political considerations and the exercise of a large measure of discretion. Evaluation of the record and of the commission's balancing of the criteria and determination of reasonableness implicates the merits of the proposed an-

nexation and poses considerable risk of drawing the judiciary into the resolution of what continues to be—despite the adoption of the administrative format—essentially a political question.[35]

No vested right or legally protected interest being involved, the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.

On our consideration of whether the commission's procedures, rulings and determinations in these cases were consistent with constitutional and statutory requirements and whether the record adequately supports the orders of annexation, we conclude that, with the exception of the Novi annexation, there is no error and the orders of annexation shall be implemented in accordance with the statute.

Midland Township

The commission approved a Midland annexation petition for the site of a proposed Consumers Power nuclear power plant. (See drawing attached.) There were no residents of the power plant site. More than 100 persons resided in the area covered by another annexation petition.

The proposed power plant will supply electricity and steam to Dow Chemical Company plants located in the City of Midland. When the nuclear power plant is placed in operation, Dow will close eight power plants located in the city, resulting in the city's loss of $8.6 to $12.6 million in state equalized valuation.

The township levies 1 mill and the city 11.3 mills. If the plant is in the township it will gener-

[35] *Cf. American Independent Party v Secretary of State,* 397 Mich 689; 247 NW2d 17 (1976).

ate tax revenues of $275,000 for the township on an estimated equalized value of $275 million. If the plant is in the city, $1,925,000 would be generated for the city at a reduced millage of 7 mills. The difference in the revenue generated, $1,650,000, would, the Commission concluded, not only "be an asset to the city but to the whole region".

A reduction of the tax rate to 7 mills, said the commission, would enable Dow "to be much more cost competitive than at the present". Dow is the "economic life-blood of a multi-county area surrounding the city". Dow operations in the city are comparatively disadvantaged "due to the level of *ad valorem*" taxes. Reestablishing the competitiveness of Dow's Midland operations "is essential for future growth in the area and the maintenance and expansion of the job market in the Greater Midland area".

The commission acknowledged that the need for services such as water, sewer, fire and police protection were not major factors in its decision as the power plant would provide many of its own internal services and call on the city or township to act only in a backup capacity.

Midland Township contends that when compared with the statutory criteria in subsections (a) and (b) (see part III B, *supra*, for text), the findings of the commission do not support the commission's decision; that the subsection (b) criterion, the probable increase in taxes in the area in relation to the benefits expected to accrue "would, if considered, suggest that the annexation should not take place" and that the commission—relying on the criterion set forth in subsection (c): "[t]he general effect upon the entire community of the proposed action"—improperly "based its result fundamentally

on a decision to award the tax base to the City of Midland," and that "[t]o maintain that the commission may ignore the other criteria and use this provision in this way would be to say that the commission can act on any basis it deems suitable from a policy standpoint."

Merely because some criteria were factually inapplicable or were found by the commission to be of less importance than other criteria does not mean that the commission "ignored" relevant criteria. The commission may regard a particular criterion to be of decisive importance outweighing all other criteria. The commission's decision to "award the tax base" to the City of Midland is supported by record evidence, is not arbitrary and is consistent with the statutory criteria and the standard of reasonableness.

Novi Township

The Novi petition covers seven separate parcels which earlier had been detached from the Village of Novi in circuit court proceedings (see part III F, *infra*). The seven parcels are located in widely separated sectors on the city's borders. (See attached map.) Fewer than 100 persons reside in the seven parcels combined.

The statute authorizes the commission to "revise the boundaries of the area"[38] covered by a petition. Novi Township requested that the area covered by the city's petition be expanded to include the balance of the township (Brookland Farms Subdivision, also shown on the attached map), where more than 100 persons resided.

The commission ruled that it could not revise the boundaries to include the eighth parcel be-

[38] MCLA 123.1010; MSA 5.2242(10).

cause its authority did not include "boundary adjustments or additions of land not contiguous with lands proposed for annexation".

While it is clear "in the light of the purpose sought to be served and the practical aspects of annexation"[37] that territory annexed to a city must adjoin the city,[38] just as there is no requirement that land proposed for annexation adjoin any other land included in the petition, a commission revision extending petition boundaries is not limited to land adjoining land proposed for annexation in the petition. The commission, in exercise of its broad-ranging power and discretion, may revise the boundaries set forth in a petition to include any land that might originally have been included in the petition or to exclude land that was included.

The Novi annexation illustrates that the impact of annexation on non-contiguous land may make it appropriate to revise the boundaries to include such land. In approving this annexation the commission proceeded on the assumption that its only options were to approve or disapprove the petition as filed and that it did not have the third option of approving the petition with a revision of the boundaries to include the non-contiguous Brookland Farms Subdivision. Since we have no way of knowing whether the commission would have included the subdivision if it was aware that it had the authority to do so, it is necessary to remand the Novi petition to the commission for reconsideration.

We do not wish to be understood as intimating that because the commission found that approval

[37] *Genesee Twp v Genesee County*, 369 Mich 592, 602; 120 NW2d 759 (1963).

[38] *Id. Similarly, see Owosso Twp v Owosso*, 385 Mich 587; 189 NW2d 421 (1971).

of annexation with the boundaries sought by the city could pose serious problems for the residents of the subdivision[39] that the commission should revise the boundaries to include the subdivision.

Brighton Township

An area contiguous to the City of Brighton, separated from the rest of the township by Interstate 96, had been designated the "Brighton Urban Growth Area". (See drawing attached.) The city's annexation petition covered more than half of the BUGA area, including a recently developed shopping center, but fewer than 100 persons resided in the area. More than 100 persons resided in the entire BUGA area.

Brighton Township contends that "the sole purpose of thus dividing the BUGA area was to gerrymander the petition to include less than 100 residents, thus forestalling the possibilities of a referendum".

The township asked the commission to revise the boundaries to include the entire BUGA area and contends that the commission's rationale for not revising them is insubstantial.

The claim that the commission should have revised the boundaries is related to the claim that the boundaries described in the petition were gerrymandered to limit the territory included so that there would be fewer than 100 residents and thereby obviate a referendum.

[39] In approving the annexation of the seven parcels the Commission said that it had examined the effect of the proposed annexation on the township and recognized that the loss of a major portion of its tax base "could present serious problems for the residents of Brookland Farms Subdivision No. 1 which would become the remainder of the township should the annexation be accomplished".

Gerrymandering

In each case the city's petition covered an area containing fewer than 100 residents, and the townships responded seeking to have the boundaries revised or petitions consolidated so that there would be more than 100 residents and a referendum would be required.[40]

The Legislature may reasonably determine that territory containing relatively few or no residents should be subject to annexation, and that there is need for a classification based on population to preclude a referendum in such a case and allow it where the territory to be annexed is more populous. (See part III A, *supra.)* City and township strategies based on such a classification are unavoidable. In general, the city will seek to limit the area proposed for annexation so that there are insufficient residents for a referendum and the township will seek to extend the area to require a referendum.

The motive or purpose of the city or township in drawing the proposed boundaries or in requesting a revision of boundaries is not material. The question is not one of motive or purpose, but whether the boundaries as drawn or revised and the annexation are reasonable. The reasonableness of the boundaries as originally proposed or as revised by the commission and of the proposed annexation does not depend on whether they were drawn or appear to have been drawn to require or preclude a referendum.

It will often be possible to draw the boundaries

[40] Midland Township sought to unite the separate annexation petitions, covering the proposed power plant and the area surrounding it. The commission said that it recognized that there was a connection between the two petitions and that they could be united. It concluded that the best interests of the whole Midland community would be served by considering them separately.

to preclude a referendum and likewise to alter them to require one. The commission need not revise the boundaries because approval of the proposed annexation would have an adverse effect on the township, the boundaries would also be reasonable as proposed to be revised and a referendum may prevent annexation. The adverse effect on the township is but a factor to be considered in deciding whether the petition should be approved with the original boundaries or with revised boundaries or not at all.

The commission's decisions approving the Midland, Brighton and Novi annexations with boundaries as originally proposed by the cities were not violative of the statutory standard, reasonableness; the Novi annexation petition is being remanded because the commission did not consider whether it might not also be reasonable or preferable to revise the boundaries to include the Brookland Farms Subdivision.

E. PUBLIC MEETINGS ACT

The townships further contend that the provisions of the 1968 public meetings act were ignored.[41] The act defines "public meeting" as follows:

> " 'Public meeting' means that part of any meeting of a board during which it votes upon any ordinance, resolution, motion or other official action proposed by or to the board dealing with the receipt, borrowing or disbursement of funds or the acquisition, use or disposal of services or of any supplies, materials, equipment or other property or the fixing of personal or property rights, privileges, immunities, duties or obligations of any person or group of persons. The term 'public meeting' shall not mean any meeting, the publication of the

[41] This act has been superseded by the 1976 Open Meetings Act, 1976 PA 267; MCLA 15.261 *et seq.;* MSA 4.1800(11) *et seq.*

facts concerning which would disclose the institution, progress or result of an investigation undertaken by a board in the performance of its official duties." 1968 PA 261; MCLA 15.251(2); MSA 4.1800(1)(2).

The hearing before the commission did not concern the "receipt, borrowing or disbursement of funds or the acquisition, use or disposal of services or of any supplies, materials, equipment or other property". Nor, for reasons already stated, did it concern "the fixing of personal or property rights, privileges, immunities, duties or obligations of any person or group of persons".

F. DISCONNECTED LAND

Lastly, Novi Township contends that land disconnected from the Village of Novi by court orders entered pursuant to the farmland disconnection act[42] was not properly annexed to the City of Novi.

The township acknowledges that disconnection is not necessarily permanent and that new facts might arise which could render a disconnection order obsolete. A disconnection order does not create a vested right or legally protected interest beyond the power of the Legislature to provide for annexation of the land disconnected. Disconnected land is subject to annexation by a city pursuant to the provisions of the 1970 amendment. Exercise by the commission of the power to annex disconnected land does not constitute a collateral attack on the judgment of the circuit court disconnecting the land.

Reversed. The orders of the commission in Midland Township and Brighton Township shall be effected as of the earliest practicable date; those cases are remanded to the circuit courts for the sole purpose of implementing the commission's

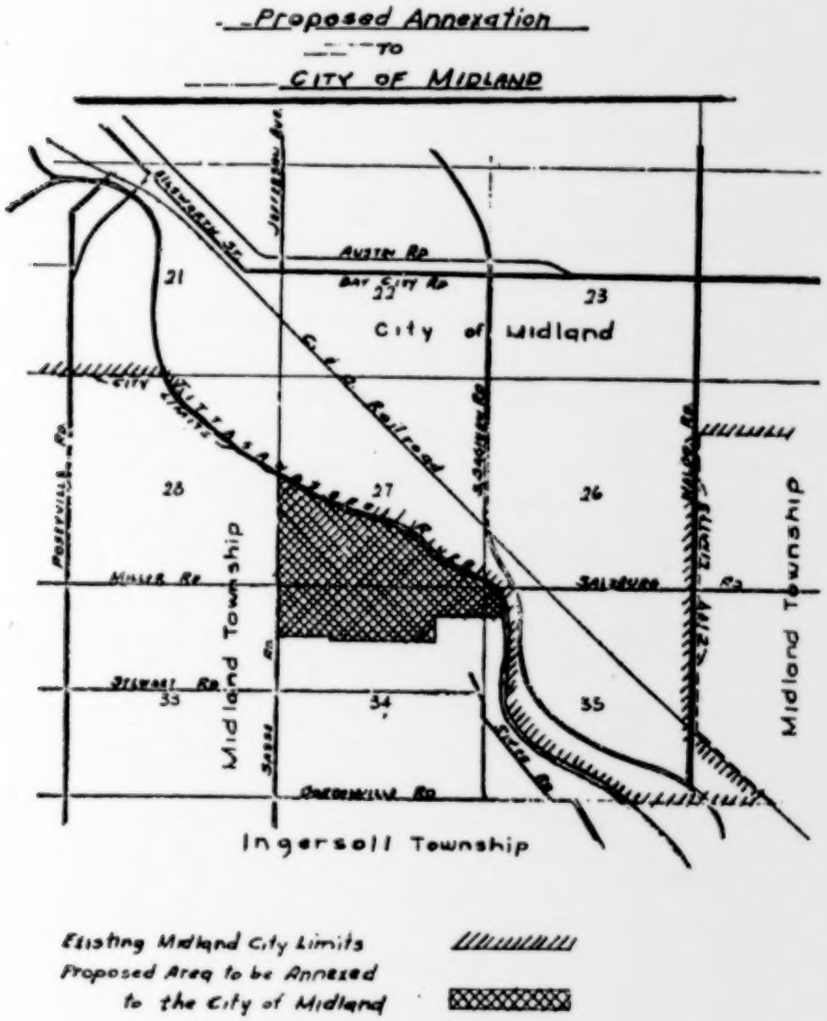
[42] MCLA 123.31 *et seq.*; MSA 5.3561 *et seq.*

orders in accordance with the statutes.[43] The Novi Township petition is remanded to the commission for further proceedings consistent with this opinion. No costs, a public question.

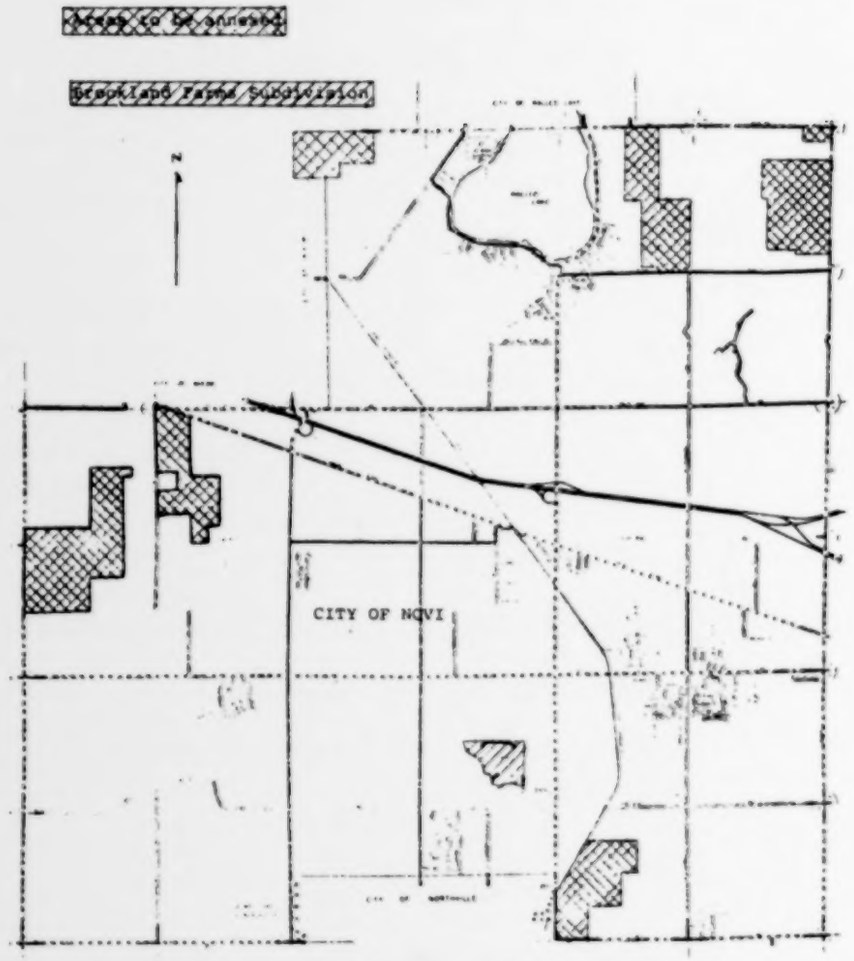
KAVANAGH, C. J., and WILLIAMS, COLEMAN, FITZGERALD, and RYAN, JJ., concurred with LEVIN, J.

BLAIR MOODY, JR., J. I concur in the majority's result in these consolidated cases. However, I cannot endorse without reservation all the analysis developed in the principal opinion; specifically I do not subscribe to all the reasoning and language contained in Part II (B) and Part III (A), (B), and (D) of this opinion.

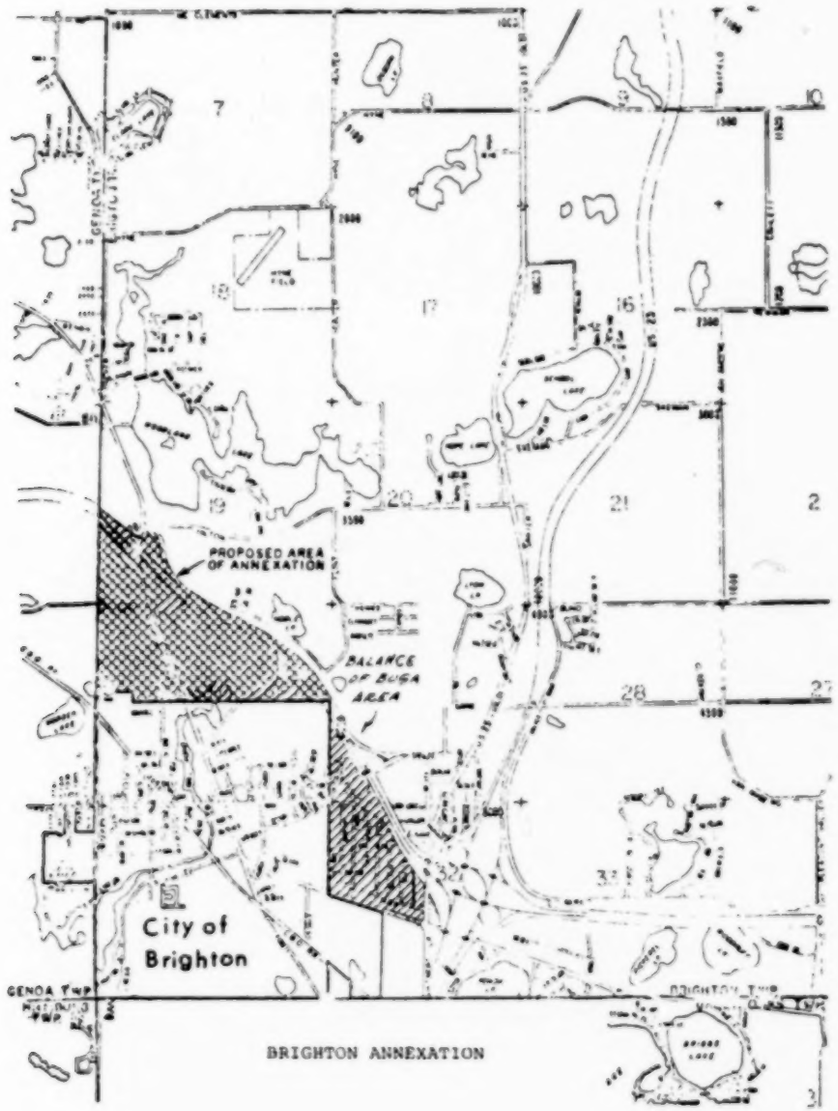
[43] It appears both from the briefs and the responses of counsel for the parties during oral argument that the appropriate effective date may depend on the particular facts and circumstances of the cases.



MIDLAND ANNEXATION



NOVI ANNEXATION



BRIGHTON ANNEXATION

EXHIBIT G

STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, a Municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON, **Plaintiffs-Appellees,** **v** **MICHIGAN STATE BOUNDARY COMMISSION,** **Defendant-Appellant,** **and** **CITY OF MIDLAND, a Municipal corporation,** **Intervening Defendant-Appellee.**	**No. 57732**

APPLICATION FOR REHEARING AND STAY ORDER

BRIEF IN SUPPORT

ORAL ARGUMENT REQUESTED

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Dated: November 14, 1977

(Continued on inside cover)

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TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON, Plaintiffs-Appellants, v MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland, and CITY OF MIDLAND, a municipal corporation, Defendants-Appellees.	No. 57720
TOWNSHIP OF NOVI, Plaintiff-Appellee, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, v STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF NOVI, a municipal corporation, Intervening Defendant-Appellee, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 58242
TOWNSHIP OF NOVI, Plaintiff-Appellee, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, v STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF NOVI, a municipal corporation, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 58243

(Continued on inside back cover)

TOWNSHIP OF NOVI, Plaintiff-Appellee, and W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN, Intervening Plaintiffs-Appellees, v STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION, Defendant, and CITY OF NOVI, a municipal corporation, Intervening Defendant-Appellant, and GREGORY I. DONOVAN, et al., Intervening Defendants.	No. 58236
TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF BRIGHTON, a Michigan municipal corporation, Intervening Defendant-Appellee, and GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 58244

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 58245
TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN, Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant, and CITY OF BRIGHTON, a Michigan municipal corporation, Intervening Defendant-Appellant, and GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation, Intervening Defendants.	No. 58223

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STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al., Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF MIDLAND, et al., Intervening Defendant-Appellee.	Supreme Court Nos. 57732 57720 58242 58243 58236 58244 58245 58223

APPLICATION FOR REHEARING AND STAY ORDER

Michigan Townships, Plaintiffs-Appellees, by their attorneys, make an Aplication for Rehearing pursuant to GCR 1963, 864.4, and move for a Stay Order and state to this Honorable Court:

1. This Honorable Court, on October 24, 1977, in the above-entitled matter, did rule contrary to the prayers of Plaintiffs-Appellees, contrary to the law as argued by attorneys for Plaintiffs-Appellees. In particular, Plaintiffs were denied equal protection of the law and due process under both the United States Constitution and Michigan Constitution.

2. In addition to the issues raised in pleadings before this Court, Plaintiffs-Appellees should have prevailed because the State Boundary Commission is organized contrary to the Constitution of the State of Michigan and the United States Constitution. The State Boundary Commission performs legislative functions and three of its members are

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appointed by the Governor (MCLA 123.1002) and two by the probate judge of the county involved (MCLA 123.1005); thus violating separation of powers as guaranteed by the Michigan Constitution (art 3, §2).

The United States Constitution guarantees the people of each state a republican form of government (US Const, art IV, §4), which was violated when the separation of powers for the creation of the State Boundary Commission was violated.

3. These issues raise questions that should be decided by this Honorable Court in favor of the Townships, Plaintiffs-Appellees, or, in the alternative, this Court should grant a Stay Order so Plaintiffs-Appellees can pursue their rights either on direct appeal to the United States Supreme Court or to the United States Federal District Court in Michigan on issues not raised in the original pleadings in this matter.

4. The declaration of the unconstitutionality of the State Boundary Commission should be applied for these cases and prospectively, not retroactively.

WHEREFORE, This Honorable Court is asked to grant the following relief:

1. Grant the relief prayed for by the Townships, Plaintiffs-Appellees, in the above-entitled causes based on the pleadings filed therein.

2. Grant the same relief based upon the new constitutional issues raised in this Motion and by the Memorandum Brief in support thereof.

3. In the alternative, grant a Stay Order until Townships, Plaintiffs-Appellees, have exhausted their legal remedies by

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appeal of the Opinion of this Honorable Court to the United States Supreme Court, or filed an independent action in the United States Federal District Court in Michigan.

Respectfully submitted,

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Dated: November 14, 1977

v

STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al., Plaintiffs-Appellees, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant, and CITY OF MIDLAND, et al., Intervening Defendant-Appellee.	Supreme Court Nos. 57732 57720 58242 58243 58236 58244 58245 58223

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING AND STAY ORDER

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Dated: November 14, 1977.

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STATEMENT OF QUESTIONS INVOLVED

I. ALL ARGUMENTS OF THE TOWNSHIPS, PLAINTIFFS-APPELLEES IN THE PLEADINGS IN THESE CAUSES, ARE INCORPORATED BY REFERENCE.

II. IS THE STATE BOUNDARY COMMISSION UNCONSTITUTIONAL?

Plaintiffs-Appellees say "yes."

Defendants-Appellants would say "no."

The Honorable Supreme Court did not address this question.

III. ARE THE ACTIONS OF THE STATE BOUNDARY COMMISSION UNCONSCIONABLE AS WELL AS UNCONSTITUTIONAL?

Plaintiffs-Appellees say "yes."

Defendants-Appellants would say "no."

The Honorable Supreme Court did not address this question.

IV. DOES THE MICHIGAN STATE BOUNDARY COMMISSION VIOLATE THE UNITED STATES CONSTITUTION?

Plaintiffs-Appellees say "yes."

Defendants-Appellants would say "no."

The Honorable Supreme Court did not address this question as raised in this Application for Rehearing.

V. SHOULD THE RELIEF IN THIS MATTER BE APPLICABLE TO THESE CASES AND PROSPECTIVE, NOT RETROACTIVE?

Plaintiffs-Appellees say "yes."

It is not known what Defendants-Appellants would say.

This question was not raised before this Honorable Court.

VI. DID ANY OF THE CASES CITED BY THIS HONORABLE COURT IN THIS CAUSE REFER TO THE SEPARATION OF POWERS AND REPUBLICAN FORM OF GOVERNMENT ISSUES RAISED IN THIS BRIEF?

Plaintiffs-Appellees say "no."

VII. IN THE ALTERNATIVE, CAN TOWNSHIPS SEEK RELIEF IN THE UNITED STATES SUPREME COURT OR THE UNITED STATES DISTRICT COURT OF MICHIGAN?

Plaintiffs-Appellees say "yes."

VIII. IN THE ALTERNATIVE, SHOULD A STAY ORDER BE GRANTED GIVING TOWNSHIPS AN OPPORTUNITY AND TIME TO GO TO THE UNITED STATES DISTRICT COURT OR THE UNITED STATES SUPREME COURT?

Plaintiffs-Appellees say "yes."

STATE OF MICHIGAN

IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al., Plaintiffs-Appellees, v **MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellant,** and **CITY OF MIDLAND, et al., Intervening Defendant-Appellee.**	**Supreme Court Nos.** 57732 57720 58242 58243 58236 58244 58245 58223

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING AND STAY ORDER

STATEMENT OF FACTS

The Statement of Facts of Townships, Plaintiffs-Appellees in the above causes of action, are incorporated by reference.

In addition to those incorporated Statement of Facts, this Honorable Court, on October 24, 1977, in the above causes, did rule against Townships, Plaintiffs-Appellees, which opinion, if left to stand, can cause irreparable damage as shown by the attached Affidavit of Robert M. Edwards.

In the pleadings, files and records in this matter, certain constitutional issues were not raised, to wit:

A. The Michigan State Boundary Commission violates the Constitution of the State of Michigan.

1. Three of the members of the State Boundary Com-

mission are appointed by the Governor (MCLA 123.1002), being an unconstitutional invasion of the executive into the legislative branch of government.

2. Two members of the Boundary Commission in the county involved are appointed by the probate judge (MCLA 123.1005), being a violation of the separation of powers by injecting the judiciary into the legislative branch of government.

3. The State Boundary Commission by its very nature denies the people the constitutional right of referendum guaranteed by Const 1963, art 2, §9.

4. The unconstitutional delegation of legislative power to the State Boundary Commission denies the people the right of having legislation establishing municipal boundaries vetoed by the Governor (Const 1963, art 4, §33) and/or overridden by the legislature by two-thirds vote (Const 1963, art 4, §33).

5. The constitutional right of boards of supervisors to organize and consolidate townships (Const 1963, art 7, §14), is abrogated by the operations of the State Boundary Commission.

B. **The United States Constitution is violated.**

The peoples of the states are guaranteed a republican form of government by US Const, art IV, §4. The denial of separation of powers above stated is a violation of the United States Constitution and the State Boundary Commission therefore violates not only the Michigan Constitution, but the United States Constitution.

The denial of people in annexed areas of under 100 population for a referendum is a denial of equal protection under the 14th Amendment (MCLA 117.9(4)).

ARGUMENT

I.

ALL ARGUMENTS OF THE TOWNSHIPS, PLAINTIFFS-APPELLEES IN THE PLEADINGS IN THESE CAUSES, ARE INCORPORATED BY REFERENCE.

II.

THE STATE BOUNDARY COMMISSION IS UNCONSTITUTIONAL.

1. The State Boundary Commission performs legislative functions.

The duties of the State Boundary Commission include legislative functions as follows:

> Sec. 8. (1) The commission shall review proposed incorporations taking into consideration the criteria established by section 9.[1]
>
> (2) If the commission finds that a petition does not conform to the provisions of this act, to the provisions of Act No. 278 of the Public Acts of 1909, as amended,[2] or Act No. 279 of the Public Acts of 1909, as amended,[3] to the extent that such requirements are not superseded by this act, or to the provisions of the rules of the com-

mission, it shall so certify, stating the reasons therefor, and return the petition to the person from whom it was received together with such certificate.

(3) Not less than 60 nor more than 220 days after the filing with the commission of a sufficient petition proposing incorporation, the commission shall hold a public hearing at some convenient place in the area proposed to be incorporated, at which public hearing the reasonableness of the proposed incorporation based upon the criteria established in this act shall be considered. If section 6[4] prohibits the commission's acting on a petition because 1 or more petitions or resolutions have priority the time period provided in this section shall commence on the date upon which the prohibition ceases.

(4) The commission shall give notice of the hearing by publication in a newspaper of general circulation in the area at least 7 days before the date of the hearing, and to the clerks of municipalities and townships affected by certified mail, at least 30 days before the date of the hearing. After the commission has entered its order for a public hearing on an incorporation proposal, neither the sufficiency nor legality of the petition shall be questioned in any proceeding.

—MCLA 123.1008
Footnotes omitted

Sec. 9. Criteria to be considered by the commission in arriving at a determination shall be:

(a) Population; population density; land area and land uses; assessed valuation; topography, natural boundaries and drainage basins; the past and probable future urban growth, including population increase and business, commercial and industrial development in the area. Comparative data for the incorporating municipality, and the remaining portion of the unit from which the area will be detached shall be considered.

(b) Need for organized community services; the present cost and adequacy of governmental services in the area to be incorporated; the probable future needs for services; the practicability of supplying such services in the area to be incorporated; the probable effect of the proposed incorporation and of alternative courses of action on the cost and adequacy of services in the area to be incorporated and on the remaining portion of the unit from which the area will be detached; the probable increase in taxes in the area to be incorporated in relation to the benefits expected to accrue from incorporation; and the financial ability of the incorporating municipality to maintain urban type services in the area.

(c) The general effect upon the entire community of the proposed action; and the relationship of the proposed action to any established city, village, township, county or regional land use plan.

—MCLA 123.1009

Sec. 10. (1) After the public hearing on a proposed incorporation and review thereof by the commission, the commision may deny the proposed incorporation, approve the petition or revise the boundaries of the area proposed for incorporation and approve the proposal as revised.

(2) If an incorporation proposal is denied by the commission its order is final immediately and the sec-

retary shall transmit a certified copy thereof to the petitioner and the clerk of each city, village and township affected.

(3) If an incorporation proposal is approved with or without a revision of the boundaries the commission's order is final 45 days after the date of the order unless within that 45 days a petition for a referendum is filed with the commission which contains the signatures of at least 5% of the registered electors residing in the area to be incorporated as approved by the commission. If a petition is not filed and the commission's order becomes final the secretary shall send a certified copy of the order to the petitioner and the clerk of each county, city, village or township affected and to the secretary of state. Charter commission elections and proceedings pursuant to Act No. 278 of the Public Acts of 1909, as amended,[1] or Act No. 279 of the Public Acts of 1909, as amended,[2] shall follow.

(4) If a referendum petition is filed the commission, after determining the validity of the petition, shall order a referendum on the question of incorporation to be held in the area approved for incorporation and shall specify a date later than the referendum on which the commission's order shall become final if the proposal is approved at the referendum.

(5) If a majority of the electorate voting on the question in the territory approved for incorporation voting collectively approves the incorporation the commission's order shall become final on the date specified therein, the secretary shall send a certified copy of the order to the petitioner and the clerk of each county, city, village or township affected and to the secretary

of state. Charter commission elections and proceedings pursuant to Act No. 278 of the Public Acts of 1909, as amended, or Act No. 279 of the Public Acts of 1909, as amended, and except as provided in subsection (6) shall follow. Otherwise the incorporation shall not take effect and no further proceedings on the petition shall take place.

(6) If on submission of a second charter, a favorable vote by a majority of the electors residing in the area proposed for incorporation is not obtained, the incorporation proceedings shall be ended and the charter commission shall have no further authority to act or to submit another charter to the electors. If a charter has not been adopted within a period of 2 years following the date the commission's order becomes final, or if within the 2-year period the charter commission does not reconvene within 90 days after the election at which the first proposed charter was defeated, the incorporation proceedings are ended.

—MCLA 123.1010
Footnotes omitted

These functions are legislative in nature since the determination of boundaries of cities, townships and other units of government, assuming for the sake of argument there are no other constitutional provisions, is purely a legislative function.

The criteria of MCLA 123.1009, above, are so vague that their application is purely legislative, and not a nondiscretionary ministerial function.

See *Goethal* v *Kent County Supervisors*, 361 Mich 104 (1960) below in paragraph 3.

The essential powers of the three branches of government were clearly articulated by the Court in *In Re Manufacturer's Freight Forwarding Co,* 294 Mich 57, 292 NW 678 (1940):

> By the Constitution of this State (1908), art. 4, § 1:
>
> "*The powers of government are divided into three departments: The legislative, executive and judicial.*"
>
> The Constitution of 1908, art. 4, § 2, also provides:
>
> "*No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution.*"
>
> "*There is a distinction between legislative and judicial acts.* The legislature makes the law—courts apply it. To enact laws is an exercise of legislative power; to interpret them is an exercise of judicial power. To declare what the law shall be is legislative; to declare what it is or has been is judicial. *The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed. The legislature prescribes rules for the future. The judiciary ascertains existing rights.*" *In re Application of Consolidated Freight Co.,* 265 Mich. 340.
>
> As said in *Prentis* v. *Atlantic Coast Line Co.,* 211 U.S. 210 (29 Sup. Ct. 67):
>
> "A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power."

> "*Our government is one whose powers have been carefully apportioned between three distinct departments,* which emanate alike from the people, have their powers alike limited and defined by the Constitution, are of equal dignity, and within their respective spheres of action equally independent. *One makes the laws, another applies the laws in contested cases, while the third must see that the laws are executed.* This division is accepted as a necessity in all free governments, and the very apportionment of power to one department is understood to be a prohibition of its exercise by either of the others. The executive is forbidden to exercise judicial power by the same implication which forbids the courts to take upon themselves his duties." *People, ex rel. Sutherland,* v. *Governor,* 29 Mich. 320 (18 Am. Rep. 89).
>
> —294 Mich 57, 63-64
> Emphasis added.

2. The appointment by the Governor of three members to the Boundary Commission is unconstitutional.

> Sec. 2. The state boundary commission is created consisting of 3 members appointed by the governor with the advice and consent of the senate. The term of office of members shall be 3 years and until their successors are appointed and qualified. A member of the commission may be removed in the manner provided by law for removal of a public officer. A vacancy

shall be filled for the unexpired term in the same manner as the original appointment. Members appointed by the governor shall be known as state members and shall qualify by taking and filing the constitutional oath of office. The per diem compensation of the commission and the schedule for reimbursement of expenses shall be established annually by the legislature. The governor shall designate a state member as chairman of the commission.

—MCLA 123.1002

The doctrine of separation of powers prohibits the Governor from exercising the functions of the legislature. In *People* v *Dettenthaler*, 118 Mich 595, 77 NW 450 (1898), the Court affirmed this view:

. . . *The governor has no power to make laws.* The legislative power is in no part vested in him, being by section 1 of article 4 of the Constitution vested in the senate and house of representatives. It is not the design of the Constitution that he should legislate. His office is a check upon the legislature, and he may compel a reconsideration of a bill by seasonably returning it to the appropriate house with his objections to it, and, when the legislature has adjourned, his neglect to sign it prevents it from becoming a law; but he has not the slightest power in framing the law. Indeed, *it is a fundamental principle in American constitutions that the executive shall not make laws.*

—118 Mich 595, 602
Emphasis added.

The same principle is found in *Wood* v *State Administrative Board*, 255 Mich 220, 238 NW 16 (1931):

. . . By Constitution, art. 4, § 1, in harmony with American political theory, the State government is divided into the three historic departments, the legislative, executive, and judicial, and by section 2 it is declared that:

"No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution."

This historical and constitutional division of the powers of government forbids the extension, otherwise than by explicit language or necessary implication, of the powers of one department to another. The language of section 37 must be read with all intendments against enlargement beyond its plain words. And if it were ambiguous, *the doubt should be resolved in favor of the traditional separation of governmental powers* and the restricted nature of the veto.

—255 Mich 220, 224-225
Emphasis added.

3. The appointment by the probate judge of members to the Boundary Commission is unconstitutional because of invasion of the judicial into the legislative branch of government.

Sec. 5. The presiding probate judge, in each county shall appoint 2 persons residing in that county to serve on the commission during such time as the commission shall have under consideration municipal boundary adjustments for territory lying within his county, 1 of whom shall reside in a township and 1 within a city. If there is no city in a county at the time of the filing of a petition for a municipal boundary adjustment the pre-

siding probate judge shall appoint 2 county members from the county at large. Within 30 days after notice from the commission that a municipal boundary adjustment is pending in the county and the office of 1 or more of the county members is vacant, the presiding probate judge shall make original appointments and any appointment to fill a vacancy. A county member shall serve for 3 years and until his successor is appointed and qualified. Notwithstanding the appointment and qualification of a successor a county member shall continue to serve until the conclusion of all boundary adjustment matters which were filed during his term or the filing of which gave rise to his appointment. If a municipal boundary adjustment involves territory lying in more than 1 county, the county members of the county in which the greater part of the territory to be included within the adjusted boundaries lies shall serve on and be voting members of the commission. A county member shall receive per diem and expenses as authorized and paid by the county board of supervisors when serving on the commission on matters involving territory within his county. A county member shall qualify by taking and filing the constitutional oath of office.

—MCLA 123.1005

In *Goethal* v *Kent County Supervisors,* 361 Mich 104 (1960), the Court held:

> . . . The power to provide for the incorporation of municipalities rests in the legislature of the State, subject to constitutional provisions designed to afford the rights and privileges of home-rule government. In the statute, provisions of which are here involved, the legislature has exercised its authority, and as incident thereto has provided for the changes of the boundaries of municipalities through certain definite procedures. Problems pertaining thereto are essentially legislative in character. No attempt has been made to vest in the courts authority to interfere in such proceedings on the ground that the objectives sought to be effected are unreasonable. *In view of the recognized division of powers between the different departments of government any attempt to vest the courts with legislative authority would be invalid.*

In 2 McQuillin, Municipal Corporations (3d ed), § 7.10, it is said:

> "The extension of the boundaries of a city or town is viewed as purely a political matter, entirely within the power of the State legislature to regulate."

In accordance with the language quoted is the further statement in section 7.12 of the same work:

> "Finally it should be borne in mind that 'the same power cannot be either legislative or judicial, as the legislature may incline to retain it, or surrender it to the judiciary. If the boundaries of municipal corporations can be altered and changed by the legislature, in its discretion, and the authorities are all that way, then it is impossible that the courts can be invested with such power. Courts may determine what are the corporate limits already established; they may determine whether what is claimed by the municipal authority to be the corporate limits is so or not, and they may inquire whether the legislative authority has exceeded the powers with which it is invested; but all this implies an existing law, applicable to the particular subject, and the

inquiry is, what is the law, and has it been violated or complied with? Here, however, the inquiry is, what shall the law be, as respects the boundaries of this city; shall it be as designated by its charter, or shall it be as prayed by the petitioners?' Then a court has no authority to act as the matter is for the legislature. If a statute requires the court to determine whether or not certain territory should be annexed to a municipal corporation, it is invalid as conferring legislative power on the courts."

Of similar nature is the following statement in 69 ALR 266, 267, in an annotation discussing at some length the delegation of legislative authority:

"It may be stated as a general rule, supported by practically all of the cases in which the proposition is considered, that the creation, enlargement, or diminution of political districts or municipal corporations is a legislative function, and that a statute which delegates the performance of this function to the judiciary, and leaves to the discretion of that body the determination of the circumstances which will justify the creation of a district or corporation, or the circumstances which will justify an enlargement or diminution of such a political subdivision, violates the constitutional provision separating the powers of the government into legislative, executive, and judicial departments."

–361 Mich 104, 112-114
Emphasis added.

"By the judicial power of courts is generally understood the power to hear and determine controversies between adverse parties, and questions in litigation." *Daniels* v. *People* (1859), 6 Mich 381, 388.

"It is the inherent authority not only to decide, but to make binding orders or judgments, which constitutes judicial power." *Underwood* v. *McDuffee* (1867); 15 Mich 361, 368.

These propositions were affirmed in *Risser* v. *Hoyt* (1884), 53 Mich 185, 192, wherein there is the following discussion of judicial power:

"By article 6 of our Constitution the judicial power is vested in one Supreme Court, in circuit courts, in probate courts, and in justices of the peace. The legislature is also authorized to establish municipal courts in cities, and courts of conciliation. The courts referred to in this article are permanent organizations for the administration of justice; and it has been held that the term does not apply to those special tribunals which the law occasionally calls into existence for particular exigencies, and which cease to exist when the occasion ceases. In such cases judicial power to a limited extent is lodged in the hands of different officers for specified purposes, to be called into action as occasion may require. The exercise of this power by such tribunals is exceptional, and has been recognized and held valid only because they were under statutes in force before the Constitution was adopted, and which it was believed were not intended to be abrogated by it; or because the proceedings were preliminary and collateral to the principal proceedings, and where the officer does not render a final adjudication on the rights of the parties. *Rowe* v. *Rowe*, 28 Mich 356; *Shurbun* v. *Hooper*, 40 Mich 503; *Daniels* v. *People*, 6 Mich 381; *Edgarton* v. *Hinchman*, 7 Mich 352; *Streeter* v. *Paton*, 7 Mich 341. But the exercise of judicial power in its strict legal sense can be conferred only upon courts

named in the Constitution. The judicial power referred to is the authority to hear and decide controversies, and to make binding orders and judgments respecting them. *Daniels* v. *People*, 6 Mich 381; *Underwood* v. *McDuffee*, 15 Mich 361."

—*Buback* v *Governor*, 380 Mich 209, 219-220; 156 NW2d 549 (1968)

4. The constitutional right of referendum on legislation is denied by the State Boundary Commission.

Sec. 9. The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

—Const 1963, art 2, § 9

Thus, the referendum of legislation is the constitutional right of the people and legislation is stayed when signatures equal to 5% of those who voted for all gubernatorial candidates at the last gubernatorial election are on petitions. This right is denied because there is no referendum provi-

sion when the areas under one hundred population are annexed, and even for larger areas the referendum is not statewide as provided by the Constitution.

Sec. 9. (1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern. The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed. However, when a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state administrative board which holds the record legal title to the entire area of the land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and with the township board of the townshp in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township.

Annexation petition or resolution, filing, hearing; commission powers

(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity

of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

Denial of annexation, procedure

(3) If an annexation is denied by the commission, the commission shall send a certified copy of its order to the clerk of each county, city, village and township affected.

Petition by 100 persons or less, approval of annexation, procedure, referendum

(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

—MCLA 117.9

5. The State Boundary Commission violates article 7, section 14 of the Michigan Constitution.

The Michigan Constitution of 1963, art 7, § 14, states as follows:

Sec. 14. The board of supervisors of each organized county may organize and consolidate townships under restrictions and limitations provided by law.

The Michigan Constitution guarantees the board of supervisors the right to organize and consolidate townships under restrictions and limitations provided by law. These restrictions and limitations are as folows:

Sec. 7. (1) Except as otherwise provided in this act, the incorporation of a village shall be initiated in the manner prescribed in and shall be subject to the provisions of Act No. 278 of the Public Acts of 1909, as amended, being sections 78.1 to 78.28 of the Compiled Laws of 1948, and for incorporation of a city as prescribed in and subject to the provisions of Act No. 279 of the Public Acts of 1909, as amended, being sections 117.1 to 117.38 of the Compiled Laws of 1948.

(2) Petitions proposing the incorporation of a city shall be signed by persons who are qualified electors and freeholders residing within the affected territory equal in number to not less than 5% of the population of the territory affected by the proposed new incorporation, or 100, whichever is greater.

(3) Petitions for incorporation shall be filed with the commission. The commission shall exercise the powers and carry out the duties of the board of supervisors, the village council or the secretary of state in relation to incorporations.

(4) No census of the territory affected by any incorporation or consolidation as provided in section 2 of Act No. 278 of the Public Acts of 1909, as amended,[1]

or by section 6 of Act No. 279 of the Public Acts of 1909, as amended,[2] shall be taken unless a proper petition therefor has been filed with the commission and the census is specifically ordered by the commission.

(5) While this act is in effect no other means of incorporation of a city or village shall be effective.

—MCLA 123.1007
Footnotes omitted

Sec. 12. (1) Proceedings for consolidation may be initiated by the filing of a petition with the commission signed by a number of registered electors who are residents of 1 or more of the affected municipalities at least equal to 5% of the total population of the affected municipalities:

Provided, however, That no new city may be created by the consolidation process unless at least 1 of the municipalities to be consolidated is an incorporated city.

(2) Any township having a common boundary that is contiguous with a city or village proposed for consolidation may be included in the consolidation if no village is incorporated within the territorial boundaries of the township or, if 1 or more villages are incorporated within the territorial boundaries of the township, then such village or villages shall be included within the consolidation. When any township is included in a consolidation, the term "municipality" as used in sections 12 to 17[1] shall include the township and the procedures set forth in such sections shall be altered as may be necessary to provide for the township.

(3) The petition shall name the municipalities proposed to be consolidated and shall request the commission to take the proceedings necessary for consolidation under this act. The commission shall reject a petition for consolidation if a proposition to consolidate the identical municipalities has been voted on within the 2 years immediately preceding the filing of the later petition. This shall not prevent the consolidation of 2 or more municipalities, which were included in a proposed consolidation voted on in the preceding 2 years, with or without additional territory, if the prior proposition included 1 or more municipalities which are not included in the later proposition.

(4) If the commission finds that a petition does not conform to the provisions of this act, Act No. 278 of the Public Acts of 1909, as amended,[2] or of Act No. 279 of the Public Acts of 1909, as amended,[3] to the extent that provisions thereof are not superseded by this act, or to the rules promulgated by the commission, the commission shall return the petition to the person from whom it was received together with a certified copy of its reasons for rejecting the petition. If the commission finds that the petition is proper it shall proceed in the manner specified for the processing of petitions which propose incorporation.

—MCLA 123.1012
Footnotes omitted

Sec. 12a. (1) After the public hearing on a proposed consolidation and review by the commission, the commission may deny the proposed consolidation, revise the boundaries of the territory to be consolidated and approve the proposal, or approve the consolidation without any change.

(2) If a consolidation proposal is denied by the commission its order is final immediately and the secretary

shall transmit a certified copy thereof to the petitioner and the clerk of each city, village or township affected.

(3) If a consolidation proposal is approved with or without a revision of the boundaries the commission's order becomes final 45 days after the date of the order unless within that 45 days a petition for a referendum is filed with the commission which contains the signatures of at least 5% of the registered electors residing in the area to be consolidated as approved by the commission. If a petition is not filed and the commission's order becomes final the secretary shall send a certified copy of the order to the petitioner and the clerk of each county, city, village or township affected and to the secretary of state. If the petition is filed, the commission after determining the validity of the petition shall submit the proposition to a vote of the electors of the affected municipalities and shall specify a date later than the referendum on which the commission's order becomes final.

(4) In order to be adopted, the proposition to consolidate shall receive an affirmative majority vote in each municipality affected voting separately. If a majority of the votes cast in each municipality affected are in favor of the proposed consolidation the commission's order becomes final and proceedings may be conducted in accordance with sections 13 to 17.[1] Otherwise the proceedings on the consolidation proposal shall terminate.

(5) The secretary shall notify the clerk of each municipality affected by the consolidation of the date for the election and the question to be submitted. Each clerk shall arrange for an election on the question of the

proposed consolidation and for the election of the charter commissioners to be elected from his municipality and he shall follow the procedure prescribed in the state election law except as otherwise provided in this act.

—MCLA 123.1012a

Sec. 13. If a proposed consolidation includes a portion of a township, the term "municipality" as defined in sections 1 and 12[1] when used in this section and sections 14, 15 and 17[2] means only that portion included within the proposed consolidated city. When its order approving a proposed consolidation becomes final, the commission shall call an election of 9 charter commissioners who shall be registered electors of the municipalities proposed for consolidation, each having a residence of at least 2 years in the municipality from which he is to be elected immediately prior to the election. The commission shall determine the number of charter commissioners to be selected from each municipality proposed for consolidation, which number shall be proportionate as near as may be to its population. Each municipality proposed for consolidation is entitled to a minimum of 1 charter commissioner, regardless of population. If charter commissioners are elected at the same election at which the proposition to consolidate is submitted, the election is void if the proposition to consolidate is not adopted. If charter commissioners are not elected at such election they shall be elected at a separate election to be held within 60 days after a favorable vote on the proposition to consolidate, which election date shall be set by the commission. No municipal officer or employee, elected or appointed, is eligible to a place on the charter commission.

—MCLA 123.1013

This constitutional right is made a nullity when the State Boundary Commission, upon petition of a legislative body of a city council can carve out sections of a township to be joined to a city contrary to the actions of the board of supervisors of the county involved.

6. The structure of the Boundary Commission violates article 1, sections 1 and 2 of the Michigan Constitution.

Article 1, section 1 reads as follows:

> Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.
>
> —Const 1963, art 1, § 1

Article 1, section 2, reads as follows:

> Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.
>
> —Const 1963, art 1, § 2

It is no accident this article and sections are placed FIRST in the Michigan Constitution to emphasize the primary of political power being inherent in the people, and government being instituted for the peoples' **equal** benefit, security and protection.

The fact that the Boundary Commission legislation (MCLA 123.1001 *et seq.*) permits its people in a city to gobble up part of a township, without the vote of the

citizens of the township, but denies the people of a township the right to gobble up part of a city without a vote by the citizens of the city, is both a denial of equal benefits of government for city and township residents and of township residents that cannot vote on annexation when only the legislative body of the city can propose annexation.

The denial of the ballot for township residents to vote on this issue affecting them, but permitting it for residents of a city, is a complete denial of this franchise for some—a grosser denial of equal protection than found in the malapportionment cases. See *Reynolds* v *Sims*, 377 US 533, 12 L Ed 2d 506, 84 S. Ct 1362 (1962).

III.

THE ACTIONS OF THE STATE BOUNDARY COMMISSION ARE UNCONSCIONABLE AS WELL AS UNCONSTITUTIONAL.

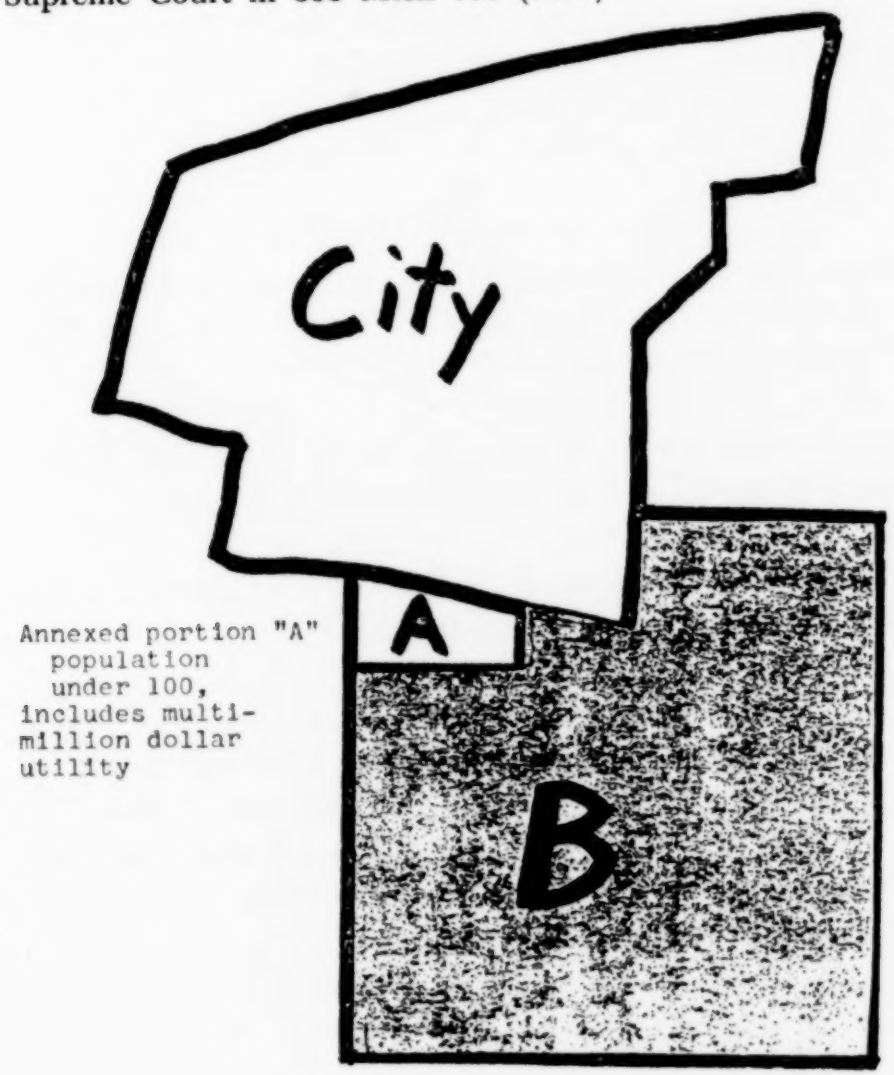
The Michigan Supreme Court, being a court of equity, looks at justice as well as technical arguments.

In *Hays* v *University of Michigan Regents*, 53 Mich App 605 (1974), the Court enunciated this position:

> "In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow • • •. Moreover, *in constitutional adjudication as elsewhere, equitable remedies are a special blend of what is necessary, what is fair, and what is workable.*
>
> • • •

> *"In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests, notwithstanding those interests have constitutional roots."* [Quoting *Lemon* v *Kurtzman*, 411 US 192; 93 S Ct 1463; 36 L Ed 2d 151 (1973).]
>
> —53 Mich App 605, 609-610
> Emphasis added.

This case was reversed on different grounds by the Supreme Court in 393 Mich 756 (1975).



The operation of the State Boundary Commission provides in the above chart that those in the shaded area "B" have absolutely no voice in whether or not the portion marked "A" is annexed from the township and given to the city. "A" might very well be a multi-million dollar utility, the tax on which provides much of the expenses for the township. By removing this tax base, the remaining people in the township will have to have substantial increases in their taxes or decreases in township services or both.

Those in the annexed area "A" cannot have a vote if the population is under 100 (MCLA 117.9(4)).

This is not just a hypothetical situation. In the matter of the City of Brighton annexing land from Brighton Township, the facts are that what was annexed was a shopping mall with no voting residents therein, but of approximately 80% of the excess tax value of the township involved.

Thus, the remaining people in the Brighton Township will have to either increase their taxes four-fold or reduce services, or both increase taxes and reduce services.

IV.

THE MICHIGAN STATE BOUNDARY COMMISSION VIOLATES THE UNITED STATES CONSTITUTION.

The United States Constitution reads in part:

> The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on applica-

tion of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

—US Const, art IV, § 4

The essence of the republican form of government is both the right to vote, and the right to have separation of powers among the judicial, executive and legislative branches of government.

1. The State Boundary Commission, by having the executive and judicial branches of government usurp the duties of the legislative branch is, per se, a violation of the republican form of government.

The Kansas Supreme Court stated in *Van Sickle* v *Shanahan*, 511 P2d 223; 212 Kan 436 (1973):

Thus, we come to the decisive question in the case—to the provisions of Article IV, Section 4 of the United States Constitution, heretofore quoted, require the conclusion that the doctrine of separation of powers is an inherent concept of a republican form of government, and is a guarantee to the people of the states that the powers inherently belonging to one department may not be vested by the people in another department of that government.

In a case involving representation in the Legislature (Harris v Shanahan, 192 Kan. 183, 387 P. 2d 771) this court considered elements of a republican form of government, i.e., whether the right of suffrage is a fundamental right of a republican form of government to be exercised in a free and unimpaired manner, and it concluded that the right is basic to a republican

form of government and the bedrock of our free political system. It was also concluded that the republican form of government is designated to function through representatives chosen by the people on regularly recurring election days and responsible to them, which is premised upon the fact the people cannot speak in mass, and the right to choose a representative is every citizen's portion of sovereign power. In the opinion it was said:

"When the founding fathers wrote the Constitution of the United States they enthusiastically established a republican form of government which became the cornerstone of American written constitutions. . . ."

• • •

An outstanding feature of the American constitutional system is the separation of the legislative, executive, and judicial powers of the government. The governments, both state and federal, are divided into three departments, each of which is given the powers and functions appropriate to it. Thus a dangerous concentration of power is avoided, and also the respective powers are assigned to the department best fitted to exercise them.

Generally speaking, the legislative power is the power to make, amend, or repeal laws; the executive power is the power to enforce the laws, and the judicial power is the power to interpret and apply the laws in actual controversies. As Chief Justice John Marshall said in Wayman v. Southard, 23 U.S. 1, 46, 6 L.Ed. 253, 263,

". . . The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law . . ."

Like the Constitution of Kansas, the United States Constitution contained no express provision requiring the separation of powers, such as is found in some state constitutions, but the separation is accomplished by the establishment of the three branches of government and the distribution of the various sovereign powers to each of them.

—*Van Sickle, supra,* 511 P2d 223, 235. Emphasis added.

In *Dearborn Twp* v *Twp Clerk,* 334 Mich 673 (1952), this Honorable Court stated:

It is apparent that section 70, *supra,* attempts to vest justices of the peace, officers possessing judicial power by virtue of article 7, § 1, with legislative and administrative power given to the township governing bodies thereof under article 8, § 17. On its face, therefore, section 70, *supra,* to the extent that it constitutes justices of the peace members of the township board is a violation of article 4, § 2, which provides that no person belonging to one department shall exercise the powers properly belonging to another.

In many decisions this Court has upheld and jealously guarded the right to keep distinctly separate one department from another. The doctrine of strict separation was early set forth by Mr. Justice COOLEY in *People, ex rel. Sutherland,* v. *Governor,* 29 Mich 320 (18 Am Rep 89). In holding that the apportionment of powers to one of the 3 co-ordinate branches is a prohibition

of its exercise by either of the other departments, he said:

"Our government is one whose powers have been carefully apportioned between 3 distinct departments, which emanate alike from the people, have their powers alike limited and defined by the Constitution, are of equal dignity, and within their respective spheres of action equally independent. One makes the laws, another applies the laws in contested cases, while the third must see that the laws are executed. This division is accepted as a necessity in all free governments, and the very apportionment of power to one department is understood to be a prohibition of its exercise by either of the others. The executive is forbidden to exercise judicial power by the same implication which forbids the courts to take upon themselves his duties."

In other decisions we have reaffirmed that doctrine and applied it to a variety of situations. We have struck down attempts by the legislature to give nonjudicial power to courts (*Houseman* v. *Kent Circuit Judge,* 58 Mich 364; *Nichols* v. *Judge of Superior Court of Grand Rapids,* 130 Mich 187; *Anway* v. *Grand Rapids Railway Co.,* 211 Mich 592 [12 ALR 26]). We forbade any attempt by the legislature to restrict judicial powers or qualifications (*People* v. *McMurchy,* 249 Mich 147; *Attorney General, ex rel. Cook,* v. *O'Neill,* 280 Mich 649). In *C. F. Smith Co.* v. *Fitzgerald,* 270 Mich 659, we reaffirmed the doctrine that the courts cannot legislate under the guise of the examination of the validity of a law. In *Wood* v. *State Administrative Board,* 255 Mich 220; and *Civil Service Commission* v. *Auditor General,* 302 Mich 673, we emphasized that the legislative and the executive could not en-

croach upon each other's powers. For other statements of the general rule see *Cooke* v. *Holland Furnace Co.*, 200 Mich 192 (LRA1918E, 552), and *Local 321, State, County & Municipal Workers of America* v. *City of Dearborn*, 311 Mich 674.

That the rule favoring strict separation of powers prevails throughout the United States need merely be mentioned in passing. From the time of the Federalist papers, the United States supreme court and other United States jurisdictions have reaffirmed that keeping the 3 great branches of government separate and distinct from each other is essential to the maintenance of a republican form of government.* This principle has become axiomatic.

–334 Mich 673, 682-683

2. The Boundary Commission Act denies both the republican form of government as guaranteed by US Const, art IV, § 4, and equal protection of laws as guaranteed by the 14th Amendment to the United States Constitution, to township voters.

A. The township legislative body cannot initiate annexation of part of a city equal to the right of a city legislative body to initiate annexation of part of a township [MCLA 117.9(7)(a)].

B. If the population of the area to be annexed is under 100, there is no right of referendum by the residents of the annexed area. [MCLA 117.9(4) and (5)].

C. Regardless of the population in the area to be annexed, there is no right to vote by those in the rest of the

township, even though they are vitally affected by the annexation [MCLA 117.9(5)].

These arguments are made under II-6 and III, above, and are incorporated by reference.

V.

THE RELIEF IN THIS MATTER SHOULD BE APPLICABLE TO THESE CASES AND PROSPECTIVE, NOT RETROACTIVE.

A court, as a practical matter, can make a ruling applicable to the cases before it prospectively, not retroactively. This is an excellent type of case for that matter and Townships, Plaintiffs-Appellees, are not asking for a retroactive application which would be confusing and could equitably be estopped on the basis of laches.

The Court held in *Lemon* v *Kurtzman*, 411 US 192; 93 S Ct 1463; 36 L Ed 2d 151 (1973):

> **[4]** The process of reconciling the constitutional interests reflected in a new rule of law with reliance interests founded upon the old is "among the most difficult of those which have engaged the attention of courts, state and federal. . . ." Chicot County Drainage Dist. v Baxter State Bank, 308 US 371, 374, 84 L Ed 329, 60 S Ct 317 (1940). *Consequently, our holdings in recent years have emphasized that the effect of a given constitutional ruling on prior conduct "is subject to no set 'principle of absolute retroactive*
>
> **[411 US 199]**
>
> *invalidity' but depends upon a consideration of 'par-*

ticular relations . . . and particular conduct . . . of rights claimed to have become vested, of status, of prior determinations deemed to have finality'; and 'of public policy in the light of the nature both of the statute and of its previous application.'" Linkletter, supra, at 627, 14 L Ed 2d 601, quoting from Chicot County Drainage Dist., supra, at 374, 84 L Ed 329. However appealing the logic of Norton may have been in the abstract, its abandonment reflected our recognition that statutory or even judge-made rules of law are hard facts on which people must rely in making decisions and in shaping their conduct. This fact of legal life underpins our modern decisions recognizing a doctrine of nonretroactivity. Appellants offer no persuasive reason for confining the modern approach to those constitutional cases involving criminal procedure or municipal bonds, and we ourselves perceive none.

—36 L Ed 2d 151, 160
Emphasis added.

[3] Claims that a particular holding of the Court should be applied retroactively have been pressed on us frequently in recent years. Most often, we have been called upon to decide whether a decision defining new constitutional rights of a defendant in a criminal case should be applied to convictions of others that predated the new constitutional development. E. g., Robinson v Neil, 409 US 505, 35 L Ed 2d 29, 93 S Ct 876 (1973); Adams v Illinois, 405 US 278, 31 L Ed 2d 202, 92 S Ct 916 (1972); Desist v United States, 394 US 244, 22 L Ed 2d 248, 89 S Ct 1030 (1969); Stovall v Denno, 388 US 293, 18 L Ed 2d 1199, 87 S Ct 1967 (1967); Johnson v New Jersey, 384 US 719, 16 L Ed 2d 882, 86 S Ct 1772 (1966); Tehan v Shott, 382 US 406, 15 L Ed 2d 453, 86

S Ct 459 (1966); Linkletter v Walker, 381 US 618, 14 L Ed 2d 601, 85 S Ct 1731 (1965). But "in the last few decades, we have recognized the doctrine of nonretroactivity outside the criminal area many times, in both constitutional and nonconstitutional cases." Chevron Oil Co. v Huson, 404 US 97, 106, 30 L Ed 2d 296, 92 S Ct 349 (1971); Hanover Shoe v United Shoe Machinery Corp. 392 US 481, 20 L Ed 2d 1231, 88 S Ct 2224 (1968); Simpson v Union Oil Co. 377 US 13, 12 L Ed 2d 98, 84 S Ct 1051 (1964); England v State Board of Medical Examiners, 375 US 411, 11 L Ed 2d 440, 84 S Ct 461 (1964). We have approved nonretroactive relief in civil litigation, relating, for example,

[411 US 198]

to the validity of municipal financing founded upon electoral procedures later declared unconstitutional, Cipriano v City of Houma, 395 US 701, 23 L Ed 2d 647, 89 S Ct 1897 (1969), and City of Phoenix v Kolodziejski, 399 US 204, 26 L Ed 2d 523, 90 S Ct 1990 (1970); or to the validity of elections for local officials held under possibly discriminatory voting laws, Allen v State Board of Elections, 393 US 544, 22 L Ed 2d 1, 89 S Ct 817 (1969). In each of these cases, the common request was that we should reach back to disturb or to attach legal consequence to patterns of conduct premised either on unlawful statutes or on a different understanding of the controlling judge-made law from the rule that ultimately prevailed.

—36 L Ed 2d 151, 159-160

This Court stated in *People* v *Fields*, 391 Mich 206 (1974):

There remains the question as to whether the decision of this Court should be given retroactive or prospective effect. Volumes have been written on this sub-

ject[2] We are concerned with the constitutionality of a statute in which the decision by a probate-juvenile judge, under the statute, can result in a person, classified as a juvenile, being waived from that classification and treated as an adult in a prosecution for a criminal offense. Some legal scholars adhere to the theory that once such a statute is declared to be unconstitutional, the court must also find that it was void and of no effect from the time of enactment. Others feel that the court finding can be given just prospective effect.

In *O'Callahan v Parker*, 395 US 258; 89 S Ct 1683; 23 L Ed 2d 291 (1969), the United States Supreme Court held that military courts lacked the authority to try a soldier who, while temporarily freed of military responsibility, had been charged with a crime cognizable in a civilian court. The issue of retroactivity of this deci-

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[2] *Gelpcke v City of Dubuque*, 68 US (1 Wall) 175; 17 L Ed 520 (1863); *Great Northern R Co* v *Sunburst Oil & Refining Co*, 287 US 358; 53 S Ct 145; 77 L Ed 360 (1932); *Chicot County Drainage Dist* v *Baxter State Bank*, 308 US 371; 60 S Ct 317; 84 L Ed 329 (1940); *Linkletter* v *Walker*, 381 US 618; 85 S Ct 1731; 14 L Ed 2d 601 (1965); *Tehan* v *Shott*, 382 US 406; 86 S Ct 459; 15 L Ed 2d 453 (1966); *Johnson* v *New Jersey*, 384 US 719; 86 S Ct 1772; 16 L Ed 2d 882 (1966); *Stovall* v *Denno*, 388 US 293; 87 S Ct 1967; 18 L Ed 2d 1199 (1967); *Desist* v *United States*, 394 US 244; 89 S Ct 1030; 22 L Ed 2d 248 (1969); *Cipriano* v *City of Houma*, 395 US 701; 89 S Ct 1897; 23 L Ed 2d 647 (1969); *Williams* v *United States*, 401 US 646; 91 S Ct 1148; 28 L Ed 2d 388 (1971); *Mackey* v *United States*, 401 US 667; 91 S Ct 1160; 28 L Ed 2d 404 (1971); *United States* v *United States Coin & Currency*, 401 US 715; 91 S Ct 1041; 28 L Ed 2d 434 (1971); *Chevron Oil Co* v *Huson*, 404 US 97; 92 S Ct 349; 30 L Ed 2d 296 (1971); *Phipps* v *School Dist of Pittsburgh*, 111 F2d 393 (CA 3, 1940); J A *Dougherty's Sons* v *Commissioner of Internal Revenue*, 121 F2d 700 (CA 3, 1941); *Warring* v *Colpoys*, 74 US App DC 303; 122 F2d 642 (1941); *McSparran* v *Weist*, 402 F2d 867 (CA 3, 1968); *Gosa* v *Mayden, Warden*, 450 F2d 753 (CA

sion came before the United States Court of Appeals, Fifth Circuit, in *Gosa* v *Mayden, Warden*, 450 F2d 753 (CA 5, 1971). Judge Clark, writing the majority opinion, said (p 758):

"It has always been the law that proceedings of a court which is without jurisdiction of the subject matter are void, but does this inevitably lead to the necessity for full retrospective application of the court decision which first discovers and announces the jurisdictional deficit? We hold it does not."

We hold that the retroactive effect of this decision is limited to those cases pending prior to October 3, 1972 (the date 1972 PA 265 was signed into law and given immediate effect) in which the issue of waiver was raised before the trial court and properly preserved on appeal.

5, 1971); *United States of America ex rel Flemings* v *Chafee*, 458 F2d 544 (CA 2, 1972); *Missouri Utilities Co* v *City of California*, 8 F Supp 454 (WD Mo, 1934).

Bingham v *Miller*, 17 Ohio 445 (1848); *Jawish* v *Morlet*, 86 A2d 96 (Mun Ct App DC, 1952); *Bricker* v *Sims*, 195 Tenn 361; 259 SW2d 661 (1953); *Haney* v *Lexington*, 386 SW2d 738 (Ky, 1964); *Bouge* v *Reed*, 254 Or 418; 459 P2d 869 (1969).

Law Review Articles:

Dunaway, *Limited Retroactivity of Overruling Decisions: A Doctrine of Justice*, 25 Va L Rev 210 (1938);

Spruill, *The Effect of an Overruling Decision*, 18 NC L Rev 199 (1940);

Levy, *Realist Jurisprudence and Prospective Overruling*, 109 U of Pa Law Rev 1 (1960);

Retroactivity of Criminal Procedure Decisions, 55 Iowa L Rev 1309 (1970).

Waivers otherwise granted prior to date of this decision and not contested upon proper preservation of the issue shall not be affected.

—*Fields, supra*, 221

VI.

A STUDY OF THE CASES CITED BY THIS HONORABLE COURT IN THIS CAUSE SHOWS THAT NONE OF THEM REFER TO THE SEPARATION OF POWERS AND REPUBLICAN FORM OF GOVERNMENT ISSUES RAISED IN THIS BRIEF.

The above statement is a negative finding. However, counsel has read the cases cited by this Court and finds that none of them deal with these questions.

VII.

IN THE ALTERNATIVE, TOWNSHIPS, PLAINTIFFS-APPELLEES, CAN SEEK RELIEF IN THE UNITED STATES SUPREME COURT OR THE UNITED STATES DISTRICT COURT OF MICHIGAN.

1. Relief in the United States Supreme Court.

Article III, § 1 of the United States Constitution states that "The judicial Power of the United States, shall be vested in one supreme Court. . . ."

Article III, § 2 provides for jurisdicion and specifically states that it shall include cases and controversies concerning disputes between states and citizens thereof.

The exact procedures for certiorari are articulated in 28 USC 1257:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

—28 USC 1257 in part.

See: Pope v *Atlantic CLR Co*, 345 US 379; 73 S Ct 740; 97 L Ed 1094 (1953); and *North Dakota State Board of Pharmacy* v *Snyder's Drug Stores, Inc*, 414 US 156; 94 S Ct 407; 38 L Ed 2d 379 (1973).

2. In the alternative, Townships, Plaintiffs-Appellees, can file new pleadings in a United States District Court in the State of Michigan having jurisdiction over one or more of the townships involved or the State Boundary Commission on questions not raised in pleadings prior to this before the Michigan State Supreme Court.

This issue of a republican form of government and separation of powers was not directly raised in the past pleadings before the Michigan Supreme Court, which did not rule on that question. Therefore, Townships, Plaintiffs-Appellees, have the option of going to the forum of a United States District Court with jurisdiction in the matter.

VIII.

IN THE ALTERNATIVE, IF THIS COURT DOES NOT GRANT A REHEARING AND THE RELIEF REQUESTED BY TOWNSHIPS, PLAINTIFFS-APPELLEES, A STAY ORDER SHOULD BE GRANTED GIVING TOWNSHIPS, PLAINTIFFS-APPELLEES, AN OPPORTUNITY AND TIME TO GO TO THE UNITED STATES DISTRICT COURT OR THE UNITED STATES SUPREME COURT.

If Plaintiffs-appellees attempted at this point of time to appeal to the United States Supreme Court or start a new action in the United States District Court, they would be premature and the federal courts would not take jurisdiction pending final action by this Honorable Court.

Since attorneys for Plaintiffs-appellees advised this Court they are prepared, if denied a rehearing, to seek relief in federal courts; this Court should grant a stay order of 20 days if it denies this application for rehearing, to give plaintiffs-appellees a reasonable time to seek relief in the United States Supreme Court or a United States District Court in Michigan.

If relief is sought in either the United States Supreme Court or the federal District Court within 20 days, an additional stay order should be granted pending the matter becoming *res judicata*.

CONCLUSION AND SUMMARY

The residents of a particular unit of government do *not* have a *substantive* constitutional right for the permanency of such boundaries in perpetuity for themselves and their children.

BUT THEY *DO* HAVE *PROCEDURAL* CONSTITUTIONAL RIGHTS THAT A PORTION OF A TOWNSHIP CANNOT BE GOBBLED UP AT THE INITIATIVE OF A CITY WITH THE APPROVAL OF AN UNCONSTITUTIONAL BOUNDARY COMMISSION AND TOWNSHIP VOTERS HAVE *NEITHER* AN EQUAL RIGHT TO GOBBLE UP PART OF A CITY *NOR* THE VOTE ON WHETHER THEY SHOULD BE INGESTED BY A CITY WITHOUT THE SAME POLITICAL VOICE AS VOTERS IN THE CITY DOING THE INGESTING.

RELIEF

WHEREFORE, this Honorable Court is asked to grant the following relief:

1. Grant the prayers of the Townships, plaintiffs-appellees, in the previous pleadings before this Court.

2. Based on the new questions of fact and law raised in these pleadings, grant the relief prayed for in the previous pleadings.

3. Declare the Michigan State Boundary Commission illegal and all their actions in relation to these causes and future matters null and void, but such application be prospective and not retroactive.

4. In the alternative, if this Court denies the application for a rehearing, grant a stay order of 20 days for the parties to file for relief either in the United States Supreme Court or a federal District Court in the State of Michigan; and if such pleadings are filed in either the United States Supreme Court or a federal District Court, grant a further stay order until the matter is *res judicata*.

Respectfully submitted,

DOWNS AND PIRICH

TOM DOWNS /s/

Tom Downs (P 12922)

JOHN D. PIRICH /s/

John D. Pirich (P 23204)

603 Capitol Savings & Loan Bldg.
Lansing, Michigan 48933
(517) 372-2990

BAUCKHAM, REED, LANG,
SCHAEFER & TRAVIS

JOHN BAUCKHAM /s/

John Bauckham (P 10544)

ROBERT F. TRAVIS /s/

Robert F. Travis (P 21541)

500 Park Building
Kalamazoo, Michigan 49007
(616) 382-4500

Dated: November 14, 1977..

AFFIDAVIT

STATE OF MICHIGAN)
COUNTY OF INGHAM) ss.

ROBERT M. EDWARDS, being first duly sworn, deposes and says as follows:

1. He is director of legislative affairs of the Michigan Townships Association, whose business address is 3121 W. Saginaw, Lansing, Michigan.

2. He has read and is familiar with the decision of *Midland Township* v *State Boundary Commission, et al*, dated October 24, 1977.

3. As a result of this decision, he has information and belief that the following cities are filing for the annexation of portions of townships of populations of 100 or less; namely:

a. City of Coldwater

b. City of Monroe

c. City of Midland (a party to this litigation)

d. City of Novi (a party to this litigation)

e. City of Brighton (a party to this litigation)

4. He has information and belief that many other cities as a result of this opinion will be taking similar action of annexing units of townships of under 100 in population that have a substantial tax base.

5. He is of the further information and belief that such action will deprive townships immediately of needed tax revenue and cause them irreparable and permanent harm.

6. He has been advised by legal counsel that the opinion of October 24, 1977, is automatically stayed 20 days, during which time none of the aforementioned action that causes irreparable damage can legally take place.

7. Because of the emergency, a stay order or other legal action is needed to prevent any such action and to preserve the status quo pending further appeals and litigation in this matter.

8. He has been advised by legal counsel that a motion for a rehearing will be filed with this Honorable Court within 20 days of the decision of October 24, 1977, that new constitutional issues will be raised, including but not limited to the allegation that the Boundary Commission is itself unconstitutional, its membership being composed of three members appointed by the Governor, and for a county two members appointed by a probate judge, thereby being a violation of separation of powers having the executive and judicial branches interfere with the legislative branch of government.

9. He is further advised by counsel and is prepared on behalf of the interested parties to pursue an appeal to the United States Supreme Court based on the deprivation of the federal constitutional rights, including but not limited to the denial of the republican form of government.

10. He is further advised that the plaintiffs involved in the aforementioned matter are authorizing the attorney for the Michigan Townships Association, in this particular

case the firm of Downs and Pirich, to act on this matter with co-counsel, being the attorney record, representing the respective townships in this matter, and that such matter will be brought on within the 20 day period for a motion for a rehearing.

11. Further affiant sayeth not.

ROBERT M. EDWARDS /s/
Robert M. Edwards

Subscribed and sworn to before me
this 31st day of October, 1977.

BEVERLY A. LANG /s/
Beverly A. Lang
Notary Public
County of Ingham, Michigan

My commission expires: 2/3/81

EXHIBIT H

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the City of Lansing, on the 16th day of December in the year of our Lord one thousand nine hundred and seventy-seven.

Present the Honorable THOMAS GILES KAVANAGH, Chief Justice; G. MENNEN WILLIAMS, CHARLES L. LEVIN, MARY S. COLEMAN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., Associate Justices

Rehearing No. 437

TOWNSHIP OF NOVI,

Plaintiff-Appellee,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

Intervening Plaintiffs-Appellees, 58236

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Defendant,

and

CITY OF NOVI, a Municipal corporation,

Intervening Defendant-Appellant,

and

GREGORY I. DONOVAN, et al,

Intervening Defendants.

In this cause an application for rehearing and a motion for stay order are considered and they are hereby DENIED.

STATE OF MICHIGAN — ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whold of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 16th day of December in the year of our Lord one thousand nine hundred and seventy-seven.

Corbin R. Davis, Deputy Clerk.

EXHIBIT 7

EXHIBIT I

Sec. 9. (1) In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Compiled Laws of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern. The district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed. However, when a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state administrative board which holds the record legal title to the entire area of the land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township.

(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed in the Lansing office of the state boundary commission. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying or revising a petition or resolution for annexation shall have the same powers and duties and be in accordance with and subject to the provisions of Act No. 191 of the Public Acts of 1968, relating to petitions which propose incorporations.

(3) If an annexation is denied by the commission, the

commission shall send a certified copy of its order to the clerk of each county, city, village and township affected.

(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

(5) If an annexation is approved, and if on the date the petition or resolution was filed more than 100 persons resided in the area approved for annexation, the commission shall send a certified copy of its order to the clerk of each county, city, village and township affected and to the secretary of state. The commission's order shall become final 30 days after the date of the order unless within that 30 days a petition is filed with the commission which contains the signatures of at least 25% of the registered electors residing in the portion of the territory approved for annexation, in the annexing city or in the balance of the township. The commission after verifying the validity of any referendum petition shall order that a referendum on the question of annexation be held in each area from which a valid petition was filed. If a valid petition is not filed within the 30 days or if the majority of the electorate voting on the question in each area in which a referendum was held, voting separately, approve the annexation, the annexation shall be effective on a date set by order of the commission, otherwise the annexation shall not take effect.

(6) The commission shall reject a petition or resolution for annexation of territory which includes all or any part of the territory which was described in any petition or resolution for annexation filed within the preceding 2 years and

which was denied by the commission or was defeated in an election pursuant to subsection (5).

(7) In addition to the methods for initiating annexation as provided in this act, a petition or resolution as follows may be submitted to the state boundary commission in a form and manner prescribed by it:

(a) By resolution of the legislative body of the city to which the area is proposed to be annexed.

(b) By petition by the persons, firms, corporations, the United States government or the state or any of its subdivisions who collectively hold record title to 75% or more of the area of the land exclusive of streets in the territory proposed for annexation at the time of filing the petition.

(c) By petition by 20% of the registered electors who reside in the area proposed for annexation.

(8) Where the territory proposed to be annexed to any city is adjacent to the city and consists of a park or vacant property located in a township and owned by the city annexing the same, and there is no one residing thereon, such territory may be annexed to the city solely by resolution of the city council of the city or in any case where the territory proposed to be annexed is adjacent to the city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city, village, or township, such annexation may also be accomplished by the affirmative majority vote of the legislative body of such city and the approval of the legislative body of such adjoining city, village or township. As an alternate method, where there are no qualified electors residing in the territory proposed to be annexed to the city, other than the person or persons petitioning, a petition signed by a person or persons, firms, corporation, the

United States government, or the state or any of its subdivisions who collectively hold the record legal title to more than ½ of the area of the land in the territory to be annexed is filed with the city council of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the city council of such city and the approval of the township board of such township. At least 10 days prior to the approval by the township board, the township treasurer shall notify, personally or by registered mail with return receipt demanded, the owners of all real property in the territory to be annexed as shown on the assessment rolls of the township at the last known address on file with the township treasurer. This section shall not be construed so as to give any city the authority to proceed hereunder to attach territory from any other city unless the question relative thereto has been voted upon by the voters of the entire cities affected, except as hereinbefore specifically provided, where the territory proposed to be annexed is adjacent to a city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city.

(9) The provisions of section 14 shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

(10) The provisions of sections 8 and 8a shall not be applicable to petitions or resolutions filed with the state boundary commission.

(11) On and after the effective date of the 1970 amendments to this section, and so long as Act No. 191 of the Public

Acts of 1968 is in effect, annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective. Amended by P.A. 1970, No. 219, § 1, Eff. April 1, 1971.

EXHIBIT J

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

I, DENNIS GILLILAND, being first duly sworn, hereby state that:

1. I am a Professor of Statistics at Michigan State University and that I hold a Ph.D. in Statistics from Michigan State University, obtained in 1966.

2. At the request of the law firm of Downs and Pirich, I undertook a study of populations, areas and state equalized valuations by township and city in Michigan. The study included data directly related to annexation proposals filed with the Michigan State Boundary Commission between 1971 and the present.

3. The results of this study are summarized in tables and stated in the brief.

Dennis Gilliland /s/
DENNIS GILLILAND

Subscribed and sworn to before me
this 6th day of March, 1978.
Denice K. Purves /s/
DENICE K. PURVIS, Notary Public
Ingham County, Michigan
My commission expires: 2/9/80

EXHIBIT K

1978 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Spring Lake	Ferrysburg	100-or-less	4,406	1,117	8,013	2,196
2.	Flint	Flint	100-or-less	19,149	82,727	29,927	193,317
3.	Flint	Flint	100-or-less	"	"	"	"
4.	"	"	100-or-less	"	"	"	"
5.	Mt. Morris	Flint	100-or-less	13,265	82,727	29,349	193,317
6.	"	"	100-or-less	"	"	"	"
7.	Flint	Flint	100-or-less	19,149	82,727	29,927	193,317
8.	"	"	100-or-less	"	"	"	"
9.	Mundy	Flint	100-or-less	4,816	82,727	8,029	193,317
10.	"	"	100-or-less	"	"	"	"
11.	Flint	Flint	100-or-less	19,149	82,727	29,927	193,317
12.	"	"	100-or-less	"	"	"	"
13.	"	"	100-or-less	"	"	"	"
14.	"	"	100-or-less	"	"	"	"
15.	"	"	100-or-less	"	"	"	"
16.	"	"	100-or-less	"	"	"	"
17.	"	"	100-or-less	"	"	"	"
18.	"	"	100-or-less	"	"	"	"
19.	"	"	100-or-less	"	"	"	"
20.	Mt. Morris	Flint	100-or-less	13,625	82,727	29,349	193,317
21.	Mundy	Flint	100-or-less	4,816	82,727	8,029	193,317
22.	"	"	100-or-less	"	"	"	"
23.	"	"	100-or-less	"	"	"	"

ON FEBRUARY 17, 1978, AN ADDITIONAL ELEVEN ANNEXATION RESOLUTIONS WERE FILED WITH THE STATE BOUNDARY COMMISSION.

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977)

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1977 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Sheridan	Fremont	100-or-less	1,117	2,139	2,477	3,465
2.	Spring Lake	Ferrysburg	100-or-less	4,406	1,117	8,013	2,196
3.	Wheatfield	Williamston	100-or-less	665	1,547	1,177	2,600
4.	Monroe	Monroe	N/A	3,954	11,951	9,351	23,894
5.	"	"	N/A	"	"	"	"
6.	Frenchtown	Monroe	N/A	6,335	11,951	14,685	23,894
7.	"	"	N/A	"	"	"	"
8.	"	"	N/A	"	"	"	"
9.	Monroe	Monroe	N/A	3,954	11,951	9,351	23,894
10.	Frenchtown	Monroe	N/A	6,335	11,951	14,685	23,894
11.	"	"	N/A	"	"	"	"
12.	Monroe/Frenchtown	Monroe	N/A	4/6,335	11,951	9,351/14,685	23,894
13.	Imlay	Imlay City	100-or-less	843	1,144	4,150	1,980
14.	"	"	100-or-less	"	"	"	"
15.	"	"	100-or-less	"	"	"	"
16.	"	"	100-or-less	"	"	"	"
17.	"	"	100-or-less	"	"	"	"
18.	"	"	100-or-less	"	"	"	"
19.	Lapeer	Lapeer	100-or-less	1,436	2,967	2,574	6,314
20.	Shelby	Utica	100-or-less	16,077	2,431	29,467	3,504
21.	"	"	100-or-less	"	"	"	"
22.	Monroe/Frenchtown	Monroe	N/A	4/6,335	11,951	9,351/14,685	23,894

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977)

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1976 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2] Twp.	Voter Registration[2] City	Population[3] Twp.	Population[3] City
# 1.	Scio	Ann Arbor	N/A	3,888	70,675	7,230	100,035
2.	Ann Arbor	Ann Arbor	100-or-less	1,930	70,675	3,589	100,035
3.	Crystal Falls	Crystal Falls	100-or-less	1,034	1,385	1,499	2,000
4.	Cotterllville	Marine City	N/A	1,034	2,299	2,194	4,567
5.	"	"	100-or-less	"	"	"	"
6.	Otisco	Belding	100-or-less	725	2,836	1,479	5,121
7.	Lansing	E. Lansing	100-or-less	5,597	31,888	11,127	47,540
8.	Pittsfie'd	Saline	100-or-less	4,687	2,767	8,185	4,811
9.	Lexington	Croswell	100-or-less	1,280	946	2,494	1,954
10.	Dayton	Fremont	100-or-less	965	2,139	1,910	3,465
11.	Dayton/Sheridan	Fremont	100-or-less	965/1,117	2,139	1,910/2,477	3,465
12.	"	"	100-or-less	"	"	"	"
13.	Sheridan	Fremont	100-or-less	1,117	2,139	2,477	3,465
14.	"	"	100-or-less	"	"	"	"
15.	"	"	N/A	"	"	"	"
16.	"	"	100-or-less	"	"	"	"
17.	"	"	100-or-less	"	"	"	"
18.	"	"	100-or-less	"	"	"	"
19.	"	"	100-or-less	"	"	"	"
20.	Dayton/Sheridan	Fremont	100-or-less	965/1,117	2,139	1,910/2,477	3,465
21.	Sheridan	Fremont	100-or-less	1,117	2,139	2,477	3,465
22.	"	"	100-or-less	"	"	"	"
# 23.	Dayton	Fremont	100-or-less	965	2,139	1,910	3,465
24.	"	"	100-or-less	"	"	"	"
25.	"	"	100-or-less	"	"	"	"

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1975 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2] Twp.	Voter Registration[2] City	Population[3] Twp.	Population[3] City
# 1.	Garfield	Traverse City	more-than-100[4]	2,901	8,926	4,917	18,048
2.	Lake	Bridgman	100-or-less	924	804	2,146	1,621
3.	Fenton	Fenton	100-or-less	5,933	4,463	8,850	8,284
4.	Madison	Adrian	more-than-100	2,018	9,188	5,494	20,382
5.	Fenton	Fenton	100-or-less	5,933	4,463	8,850	8,284
6.	Lapeer	Lapeer	N/A	1,436	2,967	2,574	6,314
7.	South Haven	South Haven	100-or-less	1,753	3,238	3,416	6,471
8.	Lexington	Croswell	100-or-less	1,280	946	2,494	1,954
9.	Mt. Morris	Mt. Morris	100-or-less	13,265	1,467	29,349	3,778
10.	"	"	100-or-less	"	"	"	"

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

[4] The Annexation Proposal was approved with boundary adjustments changing the population of the township area proposed for annexation from 100-or-less to above 100. The February 14, 1978 election resulted in the defeat of the annexation proposal.

1974 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Brighton	Brighton	N/A	3,440	1,652	5,822	2,457
2.	Sands	Marquette	N/A	358	12,835	2,164	21,967
3.	Vienna	Clio	100-or-less	4,648	1,115	9,359	2,357
4.	Sands	Marquette	N/A	358	12,835	2,164	21,967
5.	Avon	Rochester	100-or-less	15,065	4,566	24,513	7,054
6.	Plymouth	Plymouth	N/A	9,533	6,296	17,497	11,758
7.	"	"	100-or-less	"	"	"	"
8.	"	"	N/A	"	"	"	"
9.	Sheridan	Albion	100-or-less	5,318	874	2,469	12,112
10.	Lapeer	Lapeer	N/A	1,436	2,967	2,574	6,314
11.	Plymouth	Plymouth	N/A	9,533	6,296	17,497	11,758
12.	Avon	Troy	N/A	15,065	25,009	24,513	39,419
13.	Mt. Morris	Mt. Morris	100-or-less	13,265	1,467	29,349	3,778

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1973 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Coldwater	Coldwater	100-or-less	1,732	4,990	5,841	9,232
2.	Pere Marquette	Ludington	100-or-less	987	5,451	1,846	9,232
3.	"	"	100-or-less	"	"	"	"
4.	Quincy/Franklin	Hancock	100-or-less	172/719	2,274	306/1,180	4,820
5.	Union	Mt. Pleasant	N/A	2,638	11,168	4,631	20,524
6.	Brietung	Iron Mt.	N/A	2,460	6,020	3,392	8,702
7.	"	"	N/A	"	"	"	"
8.	"	"	N/A	"	"	"	"
9.	"	"	100-or-less	"	"	"	"
10.	Portage	Houghton	100-or-less	1,552	2,473	8,646	6,067
11.	Wheatfield	Williamston	N/A	665	1,547	1,177	2,600
12.	Port Huron	Port Huron	N/A	3,475	15,541	7,635	35,794
13.	Brietung	Iron Mt.	more-than-100	2,460	6,020	3,392	8,702
14.	"	"	100-or-less	"	"	"	"
15.	Brietung	Kingsford	100-or-less	2,460	2,679	3,392	5,276
16.	Brietung	Iron Mt.	100-or-less	2,460	6,020	3,392	8,702
17.	Pokagon/Silver Creek	Dowagiac	100-or-less	939/1,569	2,667	2,189/2,886	6,583
18.	Browntown	Gibralter	100-or-less	5,484	1,938	7,012	3,842
19.	Alpena	Alpena	more-than-100	4,018	6,584	9,001	13,805
20.	Imlay	Imlay City	100-or-less	843	1,144	4,150	1,980
21.	"	"	100-or-less	"	"	"	"
22.	"	"	N/A	"	"	"	"
23.	"	"	N/A	"	"	"	"

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

1972 Annexation Resolutions	Township Subject to Annexation Resolutions	City Seeking Annexation	100-or-less Residents in Township Area Proposed for Annexation[1]	Voter Registration[2]		Population[3]	
				Twp.	City	Twp.	City
# 1.	Arcada	Alma	more-than-100	806	4,338	1,665	9,611
2.	Pittsfield	Ann Arbor	100-or-less	4,687	70,675	8,185	100,035
3.	Hartford	Hartford	100-or-less	1,069	1,143	2,211	2,508
4.	Clayton	Swartz Creek	N/A	3,127	2,495	5,305	4,925
5.	Commerce	Walled Lake	N/A	10,619	1,738	18,857	3,759
6.	South Haven	South Haven	100-or-less	1,753	3,238	3,416	6,471
7.	St. Joseph	St. Joseph	N/A	6,083	6,235	10,271	11,042
8.	Brighton	Brighton	100-or-less	3,440	1,652	5,882	2,457
9.	Sturgis	Sturgis	100-or-less	699	4,486	1,449	9,295
10.	Delhi	Lansing	100-or-less	8,468	75,403	13,795	131,403
11.	Munising	Munising	100-or-less	795	2,197	1,614	3,677
12.	Scio	Ann Arbor	N/A	3,888	70,675	7,230	100,035
13.	Portsmouth	Bay City	100-or-less	2,196	26,509	4,088	49,499
14.	Buchanan	Buchanan	100-or-less	1,509	2,670	3,182	4,645
15.	Pere Marquette	Ludington	N/A	987	5,451	1,846	9,021
16.	"	"	N/A	"	"	"	"
17.	"	"	N/A	"	"	"	"
18.	"	"	N/A	"	"	"	"
19.	St. Joseph	St. Joseph	100-or-less	6,083	6,235	10,271	11,042
20.	Buchanan	Buchanan	100-or-less	1,509	2,670	3,182	4,645
21.	Portsmouth	Bay City	N/A	2,196	26,509	4,088	49,449
22.	Pere Marquette	Ludington	100-or-less	987	5,451	1,846	9,021
23.	"	"	100-or-less	"	"	"	"
24.	Shelby	Utica	more-than-100	16,077	2,431	29,467	3,504
25.	Grant	Clare	N/A	939	1,577	1,754	2,639
26.	Portsmouth	Bay City	100-or-less	2,196	26,509	4,088	49,449
27.	Scio	Ann Arbor	100-or-less	3,888	70,675	7,230	100,035

[1] The 100-or-less characteristics for the annexation resolutions of 1977 and 1978 are based on population estimates obtained from the Bureau of Local Governments, Michigan Department of Treasury, with independent confirmation from affected townships in some cases. The 100-or-less characteristics for earlier annexation resolutions come from Robert W. Terry, *Annexations and Their Characteristics; A Review of Annexation Proposals Before the Michigan State Boundary Commission* (July, 1977), or from independent determination by affected townships in some cases.

[2] *Voter registrations figures are from the Michigan Department of State, Elections Division* (January 6, 1976).

[3] Population figures for townships are from *Directory of Michigan Township Officials 1977-1979, The Michigan Townships Association, Lansing, Michigan* (1977) and for cities are from *List of Incorporated Cities in Michigan; Registrations & Records Section, Michigan Department of State, Lansing, Michigan,* (January, 1978).

Exhibit L

EXHIBIT L

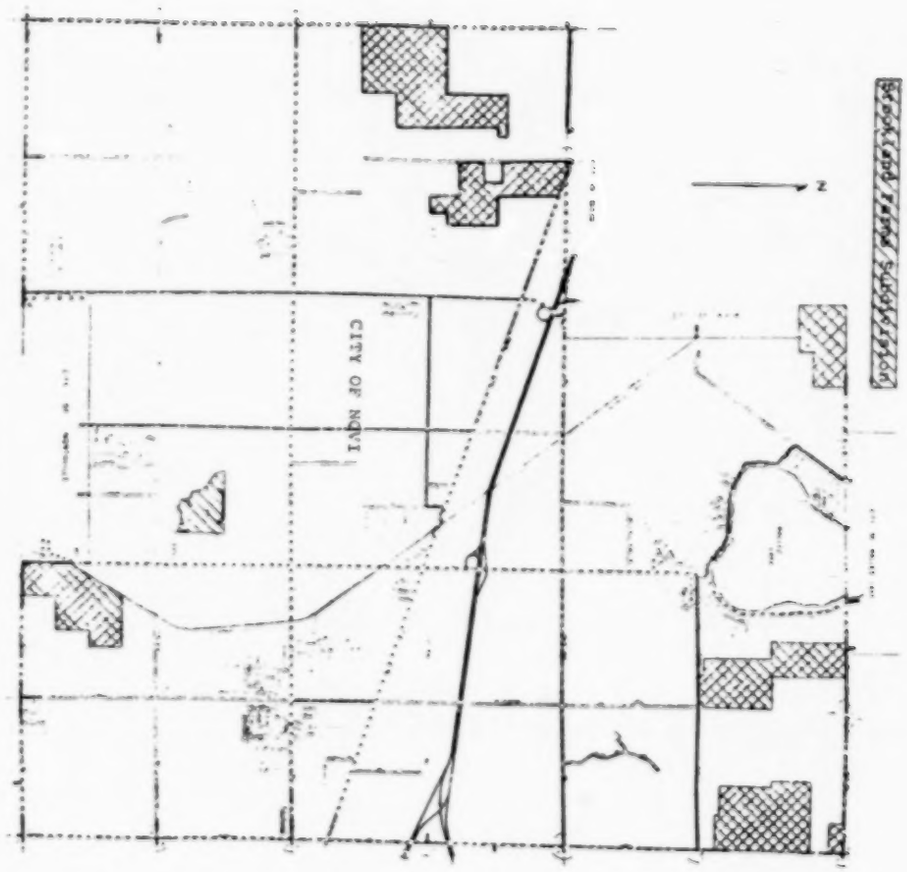
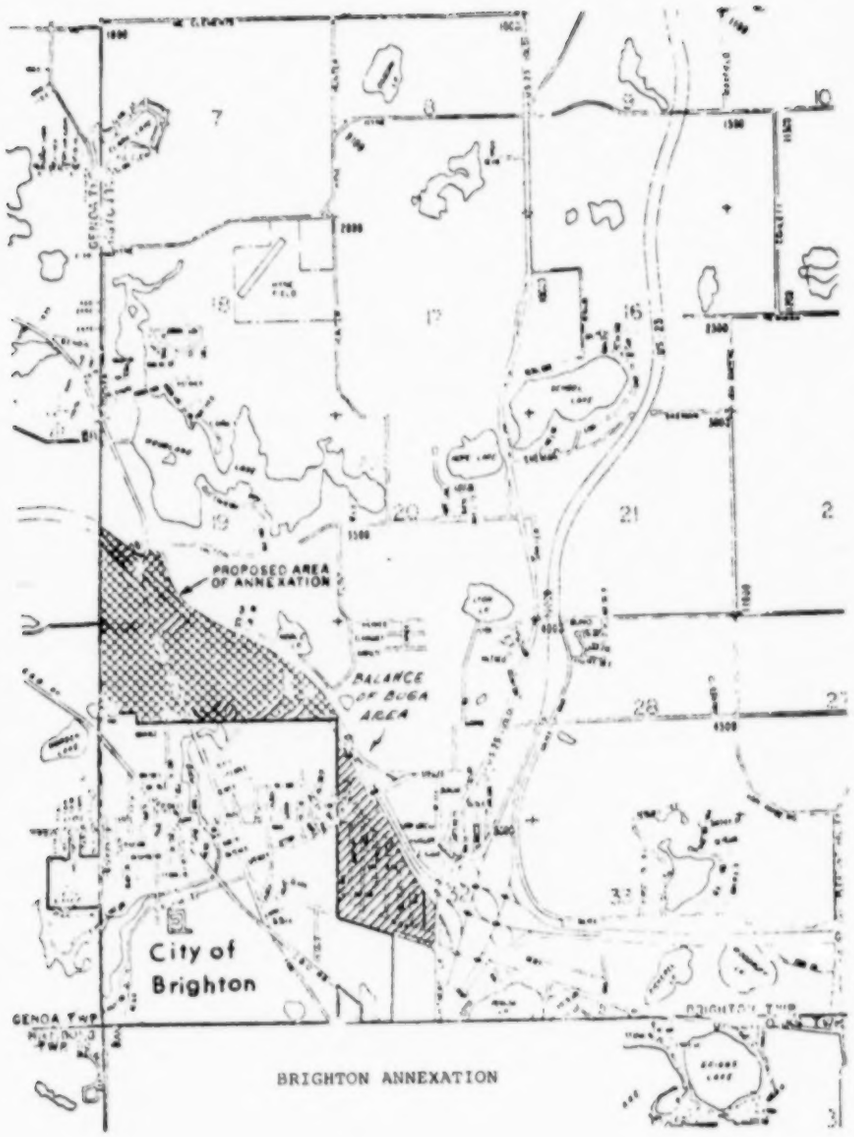
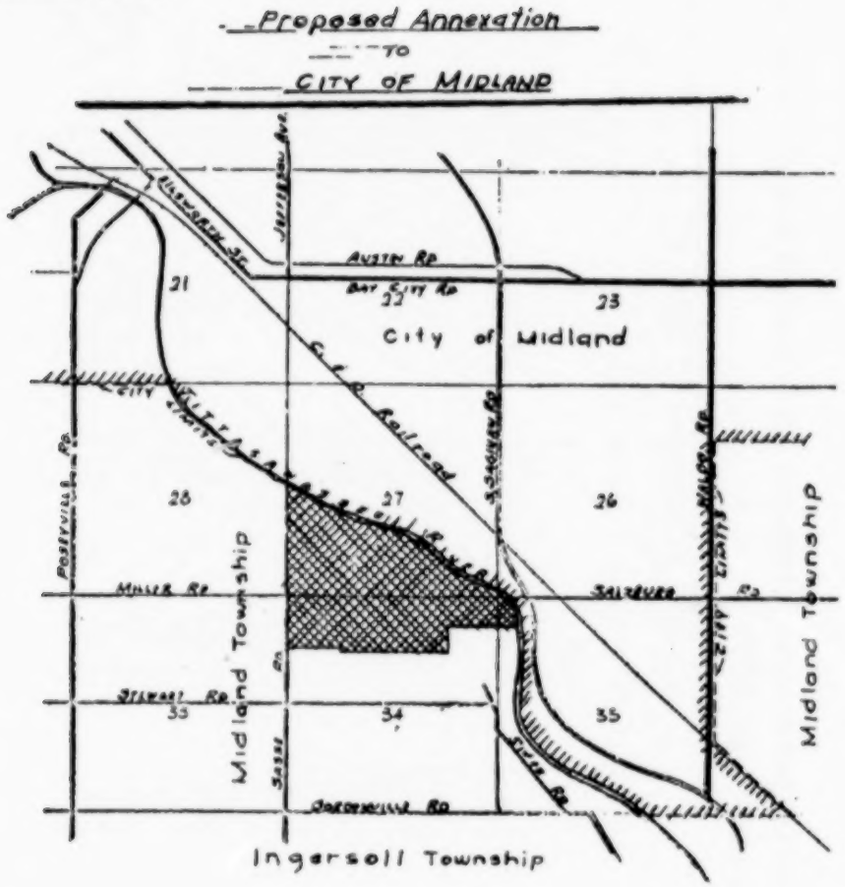


EXHIBIT M



BRIGHTON ANNEXATION

EXHIBIT N



Commencing on the West line of Section 27, T14N, R2E, at the center line of the Tittabawassee River; thence South along the West line of Sections 27 and 34 to a point 100 feet North of the North One-Eighth (⅛) line of Section 34; thence East parallel to the said North One-Eighth (⅛) line to the West One-Eighth (⅛) line of Section 34; thence South along the said West One-Eighth (⅛) line 100 feet to the North One-Eighth (⅛) line of Section 34; thence East along the said North One-Eighth (⅛) line to the East One-Eighth (⅛) line of section 34; thence North along the said East One-Eighth (⅛) line to the intersection with the North line of the South One-Half (½) of the Northeast One-Quarter (¼) of the Northeast One-Quarter (¼) of Section 34; thence East along the said North line of the South One-Half (½) of the Northeast One-Quarter (¼) of the Northeast One-Quarter (¼) of Section 34 and continuing East along the North line of the South One-Half (½) of the Northwest One-Quarter (¼) of the Northwest One-Quarter (¼) of the Northwest One-Quarter (¼) of Section 35 to the center line of the Tittabawassee River; thence Northwesterly along the center line of the Tittabawassee River to the place of beginning.

EXHIBIT O

TOWNSHIPS

Table 20. Selected Items of Township Government Finances for Population-Size Groups in Michigan 1971-72

Item	Total	Townships with a 1970 population of--				
		25,000 or more	10,000 to 24,999	5,000 to 9,999	2,500 to 4,999	Less than 2,500
MICHIGAN						
NUMBER OF TOWNSHIP GOVERNMENTS	1 248	13	39	76	170	950
POPULATION, 1970	3 235 529	508 482	611 309	533 706	566 071	1 015 961
	AMOUNT (THOUSANDS OF DOLLARS)					
GENERAL REVENUE	156 602	40 136	33 338	21 601	15 097	46 429
INTERGOVERNMENTAL REVENUE	48 225	8 743	10 670	7 604	7 535	13 673
GENERAL REVENUE FROM OWN SOURCES	108 377	31 393	22 668	13 998	7 562	32 756
TAXES	68 486	15 534	10 659	7 145	6 024	29 125
PROPERTY ONLY	64 535	14 263	10 074	6 457	5 649	28 091
CHARGES AND MISCELLANEOUS	39 891	15 860	12 009	6 852	1 538	3 632
GENERAL EXPENDITURE, ALL FUNCTIONS	119 778	34 330	27 302	16 476	12 360	29 311
OTHER THAN CAPITAL OUTLAY	105 655	29 732	24 257	14 279	11 022	26 366
EDUCATION	42	3	25	9	5	-
HIGHWAYS	19 558	3 294	3 497	1 978	2 967	7 823
PUBLIC WELFARE	36	11	9	4	2	11
POLICE PROTECTION	10 925	6 148	2 317	1 144	542	774
FIRE PROTECTION	12 232	4 556	3 820	1 639	1 667	550
SEWERAGE	6 007	2 362	1 162	1 883	340	260
SANITATION OTHER THAN SEWERAGE	2 391	1 211	400	365	339	75
PARKS AND RECREATION	2 159	1 135	544	249	178	53
FINANCIAL ADMINISTRATION	10 386	1 763	1 552	1 218	1 236	4 616
GENERAL CONTROL	15 198	3 726	2 833	2 242	2 044	4 353
GENERAL PUBLIC BUILDINGS	3 887	1 469	1 187	616	488	127
INTEREST ON GENERAL DEBT	4 885	2 276	722	1 061	282	545
OTHER AND UNALLOCABLE	32 071	6 375	9 233	4 068	2 271	10 124
UTILITY REVENUE	14 775	7 573	3 884	2 284	481	552
UTILITY EXPENDITURE	18 105	8 452	5 601	2 806	534	711
DEBT OUTSTANDING AT END OF YEAR	186 593	65 096	39 691	53 134	11 732	16 940

Item	Total	Townships with a 1970 population of--				
		25,000 or more	10,000 to 24,999	5,000 to 9,999	2,500 to 4,999	Less than 2,500
	PERCENT DISTRIBUTION					
NUMBER OF TOWNSHIP GOVERNMENTS	100.0	1.0	3.1	6.1	13.6	76.1
POPULATION, 1970	100.0	15.7	18.9	16.5	17.5	31.4
GENERAL REVENUE	100.0	25.6	21.3	13.8	9.6	29.6
INTERGOVERNMENTAL REVENUE	100.0	18.1	22.1	15.8	15.6	28.4
GENERAL REVENUE FROM OWN SOURCES	100.0	29.0	20.9	12.9	7.0	30.2
TAXES	100.0	22.7	15.6	10.4	8.8	42.5
PROPERTY ONLY	100.0	22.1	15.6	10.0	8.8	43.5
CHARGES AND MISCELLANEOUS	100.0	39.8	30.1	17.2	3.9	9.1
GENERAL EXPENDITURE, ALL FUNCTIONS	100.0	28.7	22.8	13.8	10.3	24.5
OTHER THAN CAPITAL OUTLAY	100.0	28.1	23.0	13.5	10.4	25.0
EDUCATION	100.0	7.8	60.2	21.1	10.9	-
HIGHWAYS	100.0	16.8	17.9	10.1	15.2	40.0
PUBLIC WELFARE	100.0	29.7	24.3	11.9	4.7	29.4
POLICE PROTECTION	100.0	56.3	21.2	10.5	5.0	7.1
FIRE PROTECTION	100.0	37.2	31.2	13.4	13.6	4.5
SEWERAGE	100.0	39.3	19.3	31.4	5.7	4.3
SANITATION OTHER THAN SEWERAGE	100.0	50.7	16.7	15.3	14.2	3.1
PARKS AND RECREATION	100.0	52.6	25.2	11.5	8.2	2.5
FINANCIAL ADMINISTRATION	100.0	17.0	14.9	11.7	11.9	44.4
GENERAL CONTROL	100.0	24.5	18.6	14.8	13.4	28.6
GENERAL PUBLIC BUILDINGS	100.0	37.8	30.5	15.8	12.6	3.3
INTEREST ON GENERAL DEBT	100.0	46.6	14.8	21.7	5.8	11.1
OTHER AND UNALLOCABLE	100.0	19.9	28.8	12.7	7.1	31.6
UTILITY REVENUE	100.0	51.3	26.3	15.5	3.3	3.7
UTILITY EXPENDITURE	100.0	46.7	30.9	15.5	3.0	3.9
DEBT OUTSTANDING AT END OF YEAR	100.0	34.9	21.3	28.5	6.3	9.1

Item	Total	Townships with a 1970 population of---				
		25,000 or more	10,000 to 24,999	5,000 to 9,999	3,500 to 4,999	Less than 3,500
		PER CAPITA AMOUNTS				
GENERAL REVENUE	48.40	78.93	59.54	40.48	26.67	45.70
INTERGOVERNMENTAL REVENUE	14.90	17.20	17.46	14.25	13.31	13.46
GENERAL REVENUE FROM OWN SOURCES	33.50	61.74	37.08	26.23	13.36	32.24
TAXES	21.17	30.55	17.44	13.30	10.64	28.67
PROPERTY ONLY	19.95	28.05	16.98	12.10	9.98	27.65
CHARGES AND MISCELLANEOUS	12.33	31.19	19.65	12.86	2.72	3.58
GENERAL EXPENDITURE, ALL FUNCTIONS	37.02	67.52	44.66	30.67	21.86	28.85
OTHER THAN CAPITAL OUTLAY	32.65	58.47	38.68	26.76	19.67	25.85
EDUCATION	0.01	0.01	0.01	0.02	0.01	(Z)
HIGHWAYS	4.05	8.48	5.72	3.71	3.24	7.70
PUBLIC WELFARE	0.01	0.02	0.02	0.01	(Z)	0.01
POLICE PROTECTION	3.38	12.09	3.79	2.14	0.88	0.76
FIRE PROTECTION	3.76	8.06	6.25	3.07	2.95	0.54
SEWERAGE	1.86	4.65	1.60	3.53	0.80	0.28
SANITATION OTHER THAN SEWERAGE	0.74	2.38	0.66	0.68	0.80	0.07
PARKS AND RECREATION	0.67	2.23	0.89	0.67	0.31	0.05
FINANCIAL ADMINISTRATION	3.21	5.67	2.54	2.28	2.19	4.54
GENERAL CONTROL	4.70	7.33	4.04	4.20	3.61	4.29
GENERAL PUBLIC BUILDINGS	1.20	2.69	1.04	1.15	0.86	0.13
INTEREST ON GENERAL DEBT	1.51	4.48	1.18	1.00	0.50	0.56
OTHER AND UNALLOCABLE	9.01	12.54	15.10	7.62	4.01	9.67
UTILITY REVENUE	4.57	19.69	6.35	4.28	0.85	0.56
UTILITY EXPENDITURE	5.60	16.62	9.16	9.26	0.94	0.70
DEBT OUTSTANDING AT END OF YEAR	57.67	128.02	64.93	99.56	20.73	16.67

See footnotes at end of table.

BEST COPY AVAILABLE

EXHIBIT P

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

I, MELANIE IRISH, being first duly sworn, hereby state that:

1. From February 20, 1978 to March 2, 1978, I telephoned the township officials to confirm data previously obtained from the Michigan State Boundary Commission.

2. The information being verified concerned the number of residents who actually lived in areas which city council resolutions listed in Exhbit K were proposed to be annexed from affected townships.

Further deponent sayeth not.

Melanie Irish /s/
MELANIE IRISH

Subscribed and sworn to before me
this 6th day of March, 1978.
Beverly A. Lang /s/
BEVERLY LANG, Notary Public
Ingham County, Michigan
My Commission expires: 2/3/81.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

Supreme Court, U. S.
FILED
MAR 29 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v.

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal From the Supreme Court of Michigan

SUPPLEMENTAL APPENDIX TO JURISDICTIONAL STATEMENT

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Lansing, Michigan 48933

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LANG, SCHAEFER,
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Michigan Supreme Court
Justice (1956-1973), Retired
2700 Strawberry Lane
Port Huron, Mich. 48060
March, 1978

(Continued on inside cover)

PRINTED BY SPEAKER-HINES AND THOMAS., INC., LANSING, MICHIGAN—1978

TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON,

Appellants,

v

MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland,

and

CITY OF MIDLAND, a municipal corporation,

Appellees.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

Appellee,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

(Continued on inside back cover)

STATE OF MICHIGAN
IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON, **Plaintiffs-Appellees,** **v** **MICHIGAN STATE BOUNDARY COMMISSION,** **Defendant-Appellant,** **and** **CITY OF MIDLAND,** **Intervening Defendant-Appellee.**	**No. 57732**
TOWNSHIP OF MIDLAND, a municipal corporation in Midland County, Michigan and ROBERT B. CHATTERTON, **Plaintiffs-Appellants,** **v** **MIDLAND COUNTY BOARD OF COMMISSIONERS, a body corporate; BEN PENNER, Midland County Clerk; GERMAINE A. SMITH, Midland Township Clerk; KENNETH W. LYBOLT, Clerk of the City of Midland,** **and** **CITY OF MIDLAND, a municipal corporation,** **Defendants-Appellees.**	**No. 57720**
TOWNSHIP OF NOVI, **Plaintiff-Appellee,** **and** **W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,** **Intervening Plaintiffs-Appellees,** **v** **STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,** **and** **CITY OF NOVI, a municipal corporation,** **Intervening Defendant-Appellee,** **and** **GREGORY I. DONOVAN, et al,** **Intervening Defendants.**	**No. 58242**

TOWNSHIP OF NOVI, **Plaintiff-Appellee,** **and** **W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,** **Intervening Plaintiffs-Appellees,** **v** **STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,** **Defendant-Appellant,** **and** **CITY OF NOVI, a municipal corporation,** **and** **GREGORY I. DONOVAN, et al,** **Intervening Defendants.**	**No. 58243**
TOWNSHIP OF NOVI, **Plaintiff-Appellee,** **and** **W. B. CHASE and CHASE MANOR FARMS, Inc., a Michigan corporation, and MARY ANN ODERMAN,** **Intervening Plaintiffs-Appellees,** **v** **STATE OF MICHIGAN DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,** **Defendant,** **and** **CITY OF NOVI, a municipal corporation,** **Intervening Defendant-Appellant,** **and** **GREGORY I. DONOVAN, et al,** **Intervening Defendants.**	**No. 58236**
TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, **Plaintiffs-Appellees,** **v** **MICHIGAN STATE BOUNDARY COMMISSION,** **Defendant-Appellant,** **and**	**No. 58244**

CITY OF BRIGHTON, a Michigan municipal corporation, **Intervening Defendant-Appellee,** **and** **GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,** **Intervening Defendants.**	
TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN, **Plaintiffs-Appellees,** **v** **MICHIGAN STATE BOUNDARY COMMISSION,** **Defendant-Appellant,** **and** **CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,** **Intervening Defendants.**	**No. 58245**
TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN, **Plaintiffs-Appellees,** **v** **MICHIGAN STATE BOUNDARY COMMISSION,** **Defendant,** **and** **CITY OF BRIGHTON, a Michigan municipal corporation,** **Intervening Defendant-Appellant,** **and** **GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, Inc., a Michigan corporation MACATI INVESTMENT COMPANY, a Michigan corporation,** **Intervening Defendants.**	**No. 58223**

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NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
PROOF OF SERVICE

Dated: January 18, 1978

STATE OF MICHIGAN
IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al, Plaintiffs-Appellants, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellee, and CITY OF MIDLAND, Intervening Defendant-Appellee, et al.	Supreme Court Nos. 57732 57720 58242 58243 58236 58244 58245 58223

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Township of Midland, et al, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Michigan, reversing the decision of the Court of Appeals and upholding the constitutionality of both the Home Rule Cities Act (MCLA 117.1 *et seq.*) and the State Boundary Commission Act (MCLA 123.1001 *et seq.*), as entered in this action on October 24, 1977, the Application for Rehearing and Stay Order for which was denied on December 16, 1977.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph (2).

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Dated: January 18, 1978

STATE OF MICHIGAN
IN THE SUPREME COURT

TOWNSHIP OF MIDLAND, et al, Plaintiffs-Appellants, v MICHIGAN STATE BOUNDARY COMMISSION, Defendant-Appellee, and CITY OF MIDLAND, Intervening Defendant-Appellant, et al.	Supreme Court Nos. 57732 57720 58242 58243 58236 58244 58245 58223

PROOF OF SERVICE

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

DENICE K. PURVES, being first duly sworn, deposes and says that on the *18th* day of January, 1978, pursuant to Rule 33, Rules of the United States Supreme Court, served a copy of the within NOTICE OF APPEAL TO THE SUPREME

COURT OF THE UNITED STATES, upon the attorneys of each of the parties of interest, by enclosing same in envelopes with first class postage fully prepaid and depositing the envelopes in the United States Mail at Lansing, Michigan, addressed to the parties as shown on the attached Service List. All parties required to be served have been served.

Further deponent sayeth not.

Denice K. Purves /s/
DENICE K. PURVES

Subscribed and sworn to before me
this *18th* day of January, 1978
Beverly A. Lang /s/
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My commission expires: 2/3/81

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TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

Supreme Court, U. S.
FILED
APR 13 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1283

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM

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TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

Appellee,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

(Continued on inside back cover)

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,
Intervening Defendant-Appellee,

et al

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM

The Appellee Michigan State Boundary Commission, by and through Frank J. Kelley, Attorney General for the State of Michigan, Robert A. Derengoski, Solicitor General for the State of Michigan, Milton I. Firestone and Craig Atchinson, Assistant Attorneys General for the State of Michigan, moves the Court to dismiss the appeal herein for the reason that the appeal does not present a substantial federal question or in the alternative to affirm the judgment of the Supreme Court of Michigan on the ground that it is manifest that those questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE STATUTORY PROVISION INVOLVED AND THE NATURE OF THE CASE.

A. The State Statutory Provision

The sole issue presented by this appeal is whether a statutory classification allowing the annexation of territory to a city without a referendum where 100 persons or less reside in the area approved for annexation violates the federal constitutional guarantee of equal protection of the laws.

Michigan's home rule cities act, 1909 PA 279; MCLA 117.1 *et seq;* MSA 5.2072 *et seq*, was amended by 1970 PA 219, MCLA 117.9; MSA 5.2088 so as to provide *inter alia* that petitions or resolutions proposing annexations of territory to cities would be filed with a state agency known as the State Boundary Commission. The amended statute provides that if an annexation is approved and if, on the date the petition or resolution was filed, 100 persons or less resided in the area approved for annexation, the State Boundary Commission's order approving the annexation of territory to the city would not be subject to a referendum and the annexation would become effective without approval by the electorate. However, if an annexation was approved and if, on the date the petition or resolution was filed, more than 100 persons resided in the area approved for annexation, the statute provides for a 30-day period within which a referendum petition may be filed with the Commission. If a valid petition was not filed within the 30 days or if the majority of the electorate voting on the question approved the annexation, the annexation is effective on a date set by order of the Commission. Otherwise, the annexation does not take effect.

B. The Proceedings Below

The State Boundary Commission, acting upon various resolutions adopted by city councils proposing annexations of territory, did approve annexations of territories to the City of Midland, the City of Brighton, and the City of Novi. In each case, less than 100 persons resided in the area proposed to be annexed. The respective townships commenced action in the Circuit Court for the County of Ingham attacking the proposed annexations and raising numerous questions relating to alleged violations of state law, the state constitution, and the instant federal constitutional question. The cases were consolidated during the appeal process. The Michigan Supreme Court unanimously upheld the authority of the State Boundary Commission and found that the contentions of the townships pertaining to alleged violation of the Federal Constitution, state constitution, and state law were without merit. Specifically, the Michigan Supreme Court, after careful examination of federal case law, concluded that there had been no violation of the equal protection guarantees afforded by the Fourteenth Amendment to the United States Constitution and stated:

> "We are of the opinion that the challenged classification bears a substantial relation to the object of the legislation: providing a means appropriate to the resolution of disagreements concerning annexation of territory to a city." *Midland Township* v *Boundary Commission*, 401 Mich 641, 666-667; 259 NW2d 326, 338-339 (1977).

It is from that final decision of the Michigan Supreme Court that the appellants have filed the instant appeal.

II.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION.

In conjunction with the contention of the townships that the statute in question denies equal protection of the laws to persons residing in an area containing 100 persons or fewer who are denied a referendum on a Commission order although a referendum is required where more than 100 persons reside in the area, the Michigan Supreme Court observed that such a contention ignores the nature of annexation proceedings and stated:

> ". . . No city, village, township or person has any vested right or legally protected interest in the boundaries of such governmental units. The Legislature is free to change city, village and township boundaries at will. This was settled for federal constitutional purposes in *Hunter* v *Pittsburgh*, 207 US 161, 178-179; 28 S Ct 40; 52 L Ed 151 (1907), and the principles there established have been observed in subsequent litigation in the courts of this and other states. See *Village of Kingsford* v *Cudlip*, [258 Mich 144; 241 NW 893 (1932)], p 148. Similarly, see *Lansing School District* v *State Board of Education*, 367 Mich 591; 116 NW2d 866 (1962); *The Detroit Edison Co* v *East China Twp School Dist No 3*, 247 F Supp 296 (ED Mich, 1965), aff'd 378 F2d 225 (CA 6, 1967); 56 Am Jur 2d, Municipal Corporations, § 50, p 108 and § 57, p 113." *Midland Township* v *Boundary Commission*, 401 Mich 641, 664-665; 259 NW2d 326, 337 (1977).

Although appellants suggest that this Court's holding in *Hunter* v *Pittsburgh*, *supra*, is nothing more than dicta, this

Court's prefatory remarks to its discussions of important principles relating to municipal corporations provide an important insight as to why no substantial federal question is raised by the present appeal. This Court stated:

> "This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. Maryland use of Washington County v. Baltimore & O. R. Co. 3 How. 534, 550, 11 L. ed. 714, 721; East Hartford v. Hartford Bridge Co. 10 How. 511, 533, 534, 536, 13 L. ed. 518, 527-529; United States v. Baltimore & O. R. Co. 17 Wall. 322, 329, 21 L. ed. 597, 600; Laramie County v. Albany County, 92 U.S. 307, 308, 310-312, 23 L. ed. 552-555; Tippecanoe County v. Lucas, 93 U.S. 108, 114, 23 L. ed. 822, 824; New Orleans v. Clark (Jefferson City Gaslight Co. v. Clark) 95 U.S. 644, 654, 24 L. ed. 521, 522; Mt. Pleasant v. Beckwith, 100 U.S. 514, 524, 525, 531, 532, 25 L. ed. 699, 701, 703, 704; Meriwether v. Garrett, 102 U.S. 472, 511, 26 L. ed. 197, 204; Kelly v. Pittsburgh, 104 U.S. 78, 80, 26 L. ed. 658, 659; Forsyth v. Hammond, 166 U.S. 506, 518, 41 L. ed. 1095, 1100, 17 Sup. Ct. Rep. 665; Williams v. Eggleston, 170 U.S. 304, 310, 42 L. ed. 1047, 1049, 18 Sup. Ct. Rep. 617; Covington v. Kentucky, 173 U.S. 231, 241, 43 L. ed. 679, 683, 19 Sup. Ct. Rep. 383; Worcester v. Worcester Consol. Street R. Co. 196 U.S. 539, 549, 49 L. ed. 591, 595, 25 Sup. Ct. Rep. 327; Atty. Gen. ex rel. Kies v. Lowrey, 199 U.S. 233, 50 L. ed. 167, 26 Sup. Ct. Rep. 27. It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. . . ." *Hunter* v *Pittsburgh*, 207 US at 177-178.

Accordingly, the Michigan Supreme Court was properly guided by the words of this Court in *Hunter, supra,* when this Court acknowledged that the legislature may constitutionally change municipal boundaries without an election.

> ". . . Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence

> of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State, and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it." *Hunter* v *Pittsburgh, supra,* p 178-179. Quoted with approval in *Midland Township* v *Boundary Commission, supra,* p 665-666; 338.

Two tests are traditionally applied in examining statutory classifications for violation of the constitutional guarantee of equal protection. In ordinary cases not involving suspect classifications or the alleged infringement of a fundamental interest the classification is upheld if it bears a rational relationship to a legitimate state purpose. *McGowan* v *Maryland,* 366 US 420 (1961). However, if the statute imposes a suspect classification or a classification which infringes on a fundamental interest, it must be closely scrutinized and may be upheld only if it is necessary for the furtherance of a compelling state interest. See, e.g., *Kramer* v *Union Free School District,* 395 US 621 (1969). Appellants in the instant case appear to argue that their fundamental interest in the right to vote is violated by § 9 of the home rule cities act and therefore, the classification must be closely scrutinized and may be upheld only if it is necessary for the furtherance of a state interest. Such a contention is without merit.

A similar contention was considered by the California Supreme Court in *Weber* v *City Council of Thousand Oaks,* 109 Cal Rptr 553, 513 P2d 601 (1973), where registered voters residing in "uninhabited territory" (defined by statute as territory in which less than 12 persons resided) were denied the right to vote on an annexation issue. The issue, as phrased by the Court, was "whether the inclusion or exclusion of any election as part of an annexation proceeding can justifiably be made to depend on the number of resident registered voters." 513 P2d at 607. The plaintiffs there alleged that it was unconstitu-

tional for the legislature not to have provided for an annexation election in the circumstances of that case, although providing for it in other circumstances. The *Weber* court held that the traditional (rational relationship) standard was applicable:

> "As the Legislature could constitutionally have provided that all annexations to cities be accomplished without a vote of the residents of the territory proposed to be annexed, and as the 1939 act provides for annexation without an election, the instant case involves no deprivation of or limitation on the fundamental right to vote calling for close scrutiny or justification on the basis of a compelling state interest." *Weber, supra,* 513 P2d at 608.

The court went on to hold that the classification in that case met the traditional equal protection standard.

In *Detroit Edison Co* v *East China Township School District No.* 3, 378 F2d 225 (CA 6, 1967), *cert den* 389 US 932 (1967), the plaintiffs sought, *inter alia,* a declaration that the annexation of two school districts to the school district in which they owned property violated the Fourteenth Amendment because they were denied the right to vote on the annexation proposal. At 378 F2d at 229 the court noted that the plaintiffs' reliance on "right to vote" cases was misplaced because such cases deal with the right to vote for candidates of one's choice in a representative government system, not with procedures for creating or altering any type of state district.

This conclusion is also supported by *Kramer* v *Union Free School District, supra,* wherein it is acknowledged that states have a great deal of latitude in determining whether certain questions are to be submitted to the voters. It is only after the franchise is granted the electorate that" ' . . . lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.' " *Kramer* v *Union Free School*

District, supra, p 629, quoting *Harper* v *Virginia Board of Elections,* 383 US 663, 665; 16 L Ed 2d 169, 171; 86 S Ct 1079 (1966).

Accordingly, the present situation is far different from that presented to this Court in *Gomillion* v *Lightfoot,* 364 US 339; 5 L Ed 2d 110; 81 S Ct 125 (1960). The facts of that case made it clear that the legislature "deprived the petitioners of the municipal franchise and consequent rights and to that end it has *incidentally* changed the city's boundaries." [Emphasis added.] This Court recognized:

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. . . ." *Gomillion, supra,* 347; 116.

In amplifying further on this concept, this Court more recently stated:

> "The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interests in a 'single-shot' referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives in the legislature. . . ." *Lockport* v *Citizens for Community Action,* 430 US 259, 266; 51 L Ed 2d 313, 321; 97 S Ct —— (1977).

In the *Lockport* case, it is important to note the constitutionality of the state legislative enactment pertaining to the change of boundaries was upheld by this Court and that this Court cor-

rectly granted to the state statute the presumption of constitutionality to which every duly enacted state and federal law is entitled. *Lockport, supra,* 430 US at 272; 51 L Ed 2d at 325.

A number of jurisdictions have followed *Detroit Edison Co* v *East China Township School District No. 3, supra,* and the substantial authorities cited therein. For example, it was argued to the Supreme Court of Iowa that to allow a vote in the annexing city but deny it to the annexed territory constitutes a denial of equal protection because once having extended the vote to some in a certain situation, it cannot be denied to others in a different situation. That court disposed of the argument in these terms:

> "The United States Supreme Court [in *Hunter* v *City of Pittsburgh, supra*] has stated that municipal boundaries may be altered without the consent of the inhabitants of the territory affected and 'nothing' in the Federal Constitution is to the contrary." *City of Monticello* v *Adams,* 200 NW2d 522, 524 (Iowa 1972).

In precluding a referendum in those areas having one hundred or fewer residents, the legislature might have reasoned that the orderly growth of home rule cities should not be prevented by such a small segment of the population, or that the straightening of home rule city boundaries should not be prevented by a group of people less than one hundred in number. The legislature might have reasoned that an area having a population of one hundred or less does not have a major effect on a community when it is annexed to a city and detached from a township, whereas an area having over one hundred in population might have a major effect.

It is submitted that to the extent the equal protection clause does apply to annexation proceedings, the legislature has not acted arbitrarily in adopting the classification contained in this statute.

In concluding that the challenged classification of 100 or less bore a substantial relation to the object of the legislation here in question, the Michigan Supreme Court stated:

> "Some territory annexed will be sparsely populated or unpopulated while other territory will be more heavily populated. The challenged classification, responsive to that factual difference, tends to prevent venal abuses which there is reason to believe may occur if few persons (or a small group of persons) have absolute power to prevent an annexation economically advantageous to other persons or the community at large. See *Weber* v *Thousand Oaks City Council,* 9 Cal 3d 950; 109 Cal Reptr 553; 513 P2d 601 (1973), sustaining against an equal protection challenge a classification providing for a referendum if the area has more than 12 resident registered votes but dispensing with a referendum where there are fewer votes. It was not violative of the Equal Protection Clause to draw a line, and the line drawn (at 100) was not unreasonable." *Midland Township* v *Boundary Commission, supra,* p 667; 339.

This approach is not dissimilar to that found in *Adams* v *City of Colorado Springs,* 308 F Supp 1397, 1404 (1970) where it was said:

> "The law thus recognizes that a municipality such as Colorado Springs is severely handicapped by an annexation law which requires the approval of the property owners and qualified electors of an annexed area. It is unable to deal with groups of citizens who form small tax colonies on the borders of the core city which is the economic base of the urban area and to which the colonies owe their very existence and yet pay nothing for the advantages which the city provides. These people would seldom consent to the annexation and their nonconsent would threaten the very existence of the core city."

In the *Colorado Springs* case the classification there also was upheld as reasonable, and no violation of the Fourteenth Amendment of the Constitution in terms of inequality was found.

The State of Minnesota has a Municipal Commission which is analogous to Michigan's State Boundary Commission. When tested in federal court, it was concluded that the state's statute which authorized the Municipal Commission to order consolidation of a township and a city without approval of township residents did not deny them equal protection of the laws. The court noted that the Fourteenth Amendment prevents a state from manipulating its political subdivisions so as to defeat the federally protected rights; but absent any infringement of such rights, state governments have vast leeway in the management of their internal affairs. See *Doyle* v *Municipal Commission*, 340 F Supp 841 (1972) aff'd 468 F2d 620 (1972).

In view of the foregoing authorities, it is evident that the jurisdictional statement does not present any substantial federal question. It is so wanting in substance in view of the previous decisions of this Court that the question presented needs no further argument.

III.

CONCLUSION

WHEREFORE, Appellee State Boundary Commission respectfully submits that the jurisdictional statement presents no substantial federal question and that the question upon which this cause depends is so unsubstantial as not to need further

argument; and Appellee respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the order entered in the cause by the Michigan Supreme Court.

Respectfully submitted,

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TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

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(Continued on back cover)

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Supreme Court, U. S.
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IN THE
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October Term 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v.

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Appellee,

and

CITY OF MIDLAND et al,
Intervening Parties Appellee.

On Appeal From the Supreme Court of Michigan

BRIEF OPPOSING MOTIONS TO DISMISS OR AFFIRM

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Intervening Parties Appellee.

On Appeal From the Supreme Court of Michigan

BRIEF OPPOSING MOTIONS TO DISMISS OR AFFIRM[1]

Introductory Statement

The Michigan Townships Association, concerned over the freewheeling sweep of the opinion below, has requested of undersigned counsel, Eugene F. Black, that he assist preparation of a brief opposing the motions to dismiss or affirm. That concern has deepened as township counsel, here and there throughout both peninsulas of Michigan, have learned that the

---

[1] All references in this brief, to Section 9, are to 1970-amended §9 of Michigan's 1909 statute known as the Home Rule Cities Act (MCLA §§117.1 et seq, MSA 5.2088 et seq.).

Michigan Supreme Court opinion—underpinned as it is by discredited *Hunter v. Pittsburgh*, 207 U.S. 161—has already been accepted by the Appellee Michigan State Boundary Commission as having effective precedential standing; all with result that a growing number of invariably irrevocable Section 9 annexations are being steadily approved by the Commission.

The request came about when it was learned by the Michigan Townships Association that such counsel has been helping the attorney for his home Township of Port Huron with due opposition to another more outrageous annexation petition. The latter was filed in 1973 with the Appellee Boundary Commission by the City of Port Huron (population about 37,000, situated at the easternmost point of Michigan opposite Canada), and now is being stimulated into Section 9 action by the Midland Township decision (handed down on October 24, 1977) and by denial December 16, 1977 of Appellants' motion for rehearing (402 Mich 956).

The salutatory purpose of Division I of this reply is that of meeting the Attorney General's and City of Novi's effort to justify what they successfully urged upon the Michigan Supreme Court, that is, sled-length application to Section 9 of "the seemingly unconfined dicta of *Hunter* and kindred cases".[2] For the way that dicta was copied dispositively and repeatedly employed, we respectfully invite examination

---

[2]

What did *Hunter* actually hold, when it was written in 1907? Mr. Justice Frankfurter, writing for the Court in 1960 (*Gomillion v. Lightfoot*, 364 U.S. 339) answered with delightful specificity (pp. 342, 343):

> All that case held was (1) that there is no implied contract between a city and its residents that their taxes will be spent solely for the benefit of that city, and (2) that a citizen of one municipality is not deprived of property without due process of law by being subjected to increased tax burdens as a result of the consolidation of his city with another.

of 401 Mich. at 664, 665, 666, and again at 670 and 671, (Appellants affidavit, 83a, 84a, 85a, 89a, 90a, and 93a).

Division II will compare the purpose and impact of Section 9 with the Uninhabited Territory Act and the Annexation Act of California, considered as they were in the other notable decision cited below and here by Appellee Counsel, *Weber v. City Council of Thousand Oaks*, 109 Cal. Rep. 553, 513 P. 2d. 601 (1973).

Division III, headed "The Most Sinister Classifications," will speak to those classifications and unconstitutionality.

Division IV states that if *some* have the right to vote on annexation, *all* must, under the present state of the law.

Division V will establish jurisdiction of this Court, contrary to the Novi Brief.

ARGUMENT

I.

THE NUGATORY WORTH OF *HUNTER V. PITTSBURGH* AS PRECEDENT APPLICABLE TO THE EQUAL PROTECTION CLAUSE.

Point A

Syllabus 5 (Lawyers Edition) of *Humphrey's Executor v. United States* 295 U.S. 602 (1935), a decision presently considered with apt quotation, furnishes a compact beginning:

> "5. Expressions in a judicial opinion which are beyond the point involved do not come within the rule of stare decisis".

The specific thrust of this Point A is that of pointing to the evils of uncritical employment of precedents by lawyers and judges, and to the devastating consequences that practice has brought down upon the more than 1,000 unrepresented Michigan townships which, in view of this Midland Township Case, face invidiously unbridled annexation of selectively gerrymandered bits and progressively contiguous portions of their territories; solely upon authority of this newly conceived Michigan statute with its false fortification by *Hunter's* lengthy dicta.

Our premise is that the opinion below was buttressed exclusively upon the over-enthusiastic language that appears in *Hunter*, without any reference to or apparent knowledge of intervening *Gomillion* (*Gomillion v. Lightfoot*, 364 U.S. 339 [1967]), and without any treatment whatever of the principle that the burden of proving "a compelling state interest", in suffrage cases, rests heavily upon the enacting state and brought up for judicial scrutiny.

Gomillion cogently watered the stock of *Hunter* to its true value. Witness *Gomillion's* summary at 344, after extended examination of *Hunter*:

> Thus, a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that of the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases.

It is unfortunate that the Michigan Court did not refer to *Gomillion* and apparently from a review of the index of authorities, even though *Hunter* was referred to, no reference

was made to *Gomillion*. See pages 16-17 of the Michigan Supreme Court Brief of Attorney General that advances *Hunter* as controlling and makes no reference to *Gomillion*.

The warning expressed by *Gomillion* was, so far as we can learn, written first by Chief Justice Marshall when one of his own opinions, indicative language and all, was cited to this Court as controlling of *Marbury v. Madison*, 1 Cranch 137 (1803) *Humphrey's Executor v. United States*, 295 U.S. 602, chronicles the event (pp. 626, 627):

> A like situation was presented in the case of *Cohen v. Virginia*, 6 Wheat 264, 399, 5 L ed. 257, 290, in respect of certain general expressions in the opinion in *Marbury v. Madison*, 1 Cranch 137, 2 L ed. 60.
>
> "Chief Justice Marshall, who delivered the opinion in the *Marbury* case, speaking again for the court in the Cohen case, said:
>
> 'It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.'

Such a warning is by no means unknown in Michigan. When *Holcomb v. Bonnell*, 32 Mich. 6, came to submission in 1875, an earlier decision of the Court was cited as controlling but

found "open to an application much more extended than was designed unless strictly confined to the state of facts there shown." Our revered Cooley Court then proceeded with the same admonition (p. 8):

> It is hardly necessary to observe that the language used in deciding cases can rarely be separated from the specific matters contemplated by the court, without leading to results completely at variance with the principle with which the expressions were meant to harmonize. In laying down propositions which appear correct in view of the actual case as shaped by the record, *it is not generally considered needful to write down in guarded terms the particular limitations of the propositions or the conditions which would be read not as abstractions, but as propositions inseparably bound up with the particular issue and matters the court is then dealing with,* and it is in this way that the observations in the case mentioned must be considered, and without yielding to them any further than the needs of that case required."
>
> —Emphasis added.

Three years later the Michigan Supreme Court repeated the need for such vigilance in even stronger language (*Larzelere v. Starkweather,* 38 Mich. 96, 101, 135 N.W. 701). Next, and in 1971, *Larzelere's* warning repeated in big complete quotation in *Koschay v. Barnett Pontiac, Inc.,* 386 Mich. 223, 230, 231, 191 N.W. 2d 334.

Perhaps Mr. Justice Cardozo put all this at its best in his "Nature of the Judicial Process" (pp. 29, 30; Yale University Press, 1921):

> I own that it is a good deal of mystery to me how judges, of all persons in the world, should put their faith in dicta.

> *A brief experience on the bench was enough to reveal to me all sorts of cracks and crevices and loopholes in my own opinions when picked up a few months after delivery, and reread with due contrition. The persuasion that one's own infallibility is a myth leads by easy stages and with somewhat greater satisfaction to a refusal to ascribe infallibility to others.*
>
> —Emphasis Added.

If, as appellants claim, the 71-year-old opinion of *Hunter* may not be taken as barring their present appeal to the right of equal protection, then it is respectfully suggested that the emergent need for arrest of the Judgments below or, better yet, for an order directing remand for further consideration in the light of *Gomillion* and of the "compelling state interest" cases, has been fairly demonstrated. The suggested practice, "well established", for instances where a subsequent decision clearly calls for remand was pursued at the same term both as *W.M.C.A. v. Simon,* 370 U.S. 190 (1962) and *Scholle v. Hare,* 369 U.S. 429 (1963).

Both were notable suffrage cases. Both are well known to most counsel in the case at bar. Chief Justice Warren, in writing later for the Court in *Reynolds v. Sims,* 377 U.S. 533 (1964) at 557, noted the fact of each remand for the quoted purpose.

Scholle v. Hare and its equal protection impact upon all Michigan are well known to most counsel now at bar. The single result of remand there was reversal by the Michigan Supreme Court of its first judgment, effected by 1962 *Scholle v. Secretary of State,* 367 Mich. 176. No effort to review that 1962 judgment was made.

This case, whether affirmed, reversed or remanded, will affect township government of the people for years to come just as *Scholle* affected legislative districts far into the future.

The prime reason is that the electors of a township know for whom they have voted and are voting for or against as township candidates, and never hesitate to recall or discharge rascals when they turn out to be rascals.

Point B

Quite aside from the above, appellants respectfully insist that *Hunter*, on its face as it read, and now reads, never became an authority within the Equal Protection Clause.

No one of the several city counsel in these cases, having decided with the attorney general to employ that "unconfined dicta" against the Plaintiff-Appellants' claimed right of equal protection, could have read *Hunter* with due care. Otherwise he would have noted—and remarked in his writing—the visible fact that *Hunter's* appeal to this Court *assigned only the right of due process, and that no right of equal protection was before or considered by the Court.* Indeed, the phrase "equal protection" cannot be found anywhere in the opinion of *Hunter*, or in the then contentions and citations of counsel for appellants Hunter, et al. The latter appear with detail at pages 171, 172 and 173 of *Hunter's* report.[3]

There can be no reasoned question about this. Mr. Justice Moody, for the Court, epitomized the specific constitutional issue which gave rise to that long paragraph of *Hunter*, start-

[3]
Aside from the six other assignments of error that were "quickly disposed of" plus the one that alleged impairment of the obligation of a non-existent contract (p. 176).

ing on 177 and continuing through most of 178, which is the paragraph that includes the dicta adopted below. Said he (p. 177):

> Briefly stated, the assertion in the fourth assignment of error is that the Act of Assembly deprives the Plaintiffs in error of their property without due process of law, by subjecting it to the burden of the additional taxation which would result from the consolidation.

Hunter is silent on the question of the applicability of equal protection to annexation issues and voting rights on annexation simply because that issue was never raised or discussed by counsel before the Court.

NO OTHER UNITED STATES SUPREME COURT CASE WAS CITED BY THE MICHIGAN COURT IN THIS MATTER.

II.

THE WEBER CASE (109 Cal. Rep. 553, 513 P. 2d. 601 [1973]) AND THE STATUTORY SITUATION CONSIDERED THERE, COMPARED WITH SECTION 9'S UNIQUE METHOD OF BARRING THE RIGHT OF FRANCHISE OF TOWNSHIP VOTERS.

In *Weber*, citing 1971 *Gordon v. Lance* (403 U.S. 1), the Court relieved the defendant City Council from proving that requisite "compelling State interest" by holding that Mr. and Mrs. Weber did not, under the presented facts and statutory circumstances, constitute an aggrieved "identifiable class" (*Weber* at 607).[4]

[4]
All page references to *Weber*, except those designating the initial page of the official California Report, are taken from 513 P 2d.

No effort to review *Weber* was undertaken. The probable reason was that the California legislature spelled out a compelling state interest in specific and detailed language for their annexation legislation—a factor entirely lacking in the Michigan annexation law.

Now for that evidence. At 609 the Court noted that the 1939 Act was amended in 1945 to permit annexation "wherein less than three qualified electors reside;" that the Act was amended again [1947] to permit annexation "wherein less than 12 registered voters aside," and that the 1947 amendment was "given immediate effect as an urgency measure" in company with this formal legislative declaration of compelling necessity:

> The extreme shortage of housing in the State of California and the lack of a sufficient number of vacant lots within cities on which to build such housing has made it necessary to build outside of cities and in the fringe areas adjacent thereto. In order to provide such housing with the necessary sewage, sanitation and utility services, it is essential that such areas be permitted to annex to contiguous cities which would be able to extend existing municipal services to the annexed areas. The immediate adoption of this act will enable cities and areas adjacent thereto which desire to annex to such cities to provide police, fire protection, sewage and sanitation services to such housing as soon as constructed. (Stats. 1947, ch. 419, § 4, p. 1036.)

We represent that there is in Michigan no counterpart of this legislative finding and declaration, and that there never has been any compelling reason in our State for radical legislation, akin in any way to Section 9, save only that which has been generated by the covetous avarice of public as well as

private exploiters and developers of farming or sparsely settled areas. All the attorney general offers in such regard are his own unsworn and rather vagarious assumptions, such as (brief below at 23, 24):

> The legislature might have reasoned that an area having a population of 100 or less does not have a major effect on a community when it is annexed to a city and detached from a township, whereas an area having over 100 in population might have a major effect.

To these he has appended further notion that the legislature "might have reasoned that the orderly growth of home rule cities", or "the straightening of home rule city boundaries", should not "be prevented by such a small segment" or by "a group of people less than 100 in number" (motion to dismiss or affirm at page 10).

Repeating that the Michigan legislature has recorded no evidence of thought upon these fancies, we say they are invidiously wrong because Section 9 provides no limit on the number ("100 persons or less") of separate resolutions with accompanying petitions which a city may resolve and file, *simultaneously or by daily progression*, against the inhabitants of that marked-for-multilation nearby township. Hence we consider Section 9 wholly malignant in Fourteenth Amendment sense because it licenses elimination of *all voting in selected parts of the township*, just so long as each petition in succession is drawn so that it takes in less than 100 retract, by each step of the raid as planned.

If this sounds far-fetched, then we request that the Court consider all those 1977 and 1978 "100-or-less" annexation petitions that appear in Exhibit "K" (appendix 174a-181a). Not

just the big cities but even little ones like Imlay City, population 1,980, situated some 60 miles north of Detroit in the rich agricultural area known as Michigan's "Thumb", are hard at the game of progressive seizure of "100-or-Less" suburban or farming areas. Turning from that region to the remote and thinly populated Northern Peninsula, we find that the like little City of Munising, with Lake Superior on one side and square mile after square mile of forest land on the other, is out to capture a "100-or-less" big chunk of Munising Township (180a).

This isn't annexation that offends just "a small segment". It is step-by-step unilateral confiscation of tracts made contiguous by reprehensible practice which can and will deny invidiously the right to vote, of hundreds in each assailed township unless it is arrested pending enactment of a more sane and fair statute.

The above is not all of the comparative distinguishment *Weber* provides. By way of detailed conclusion, the *Weber* Court took pains to record the existence in California of sufficient judicial remedies and statutory inhibitions that are designed to frustrate rapacious and arbitrary annexations. Complete footnote 12, extending in fine print across nearly half of page 610, presents these safeguards in detail. Deserving special mention here, they protect against a species of domino downfall that is becoming favorite practice in Michigan. To quote Section 12's first example (*Weber* at 610):

> (1) Simultaneous 1939 Act proceedings to annex territories contiguous to each other, each of which contains fewer than 12 resident voters but which together contain more than 12, disqualifying the combined territories under the 1939 Act (*City of Anaheim* v *City of Fullerton*, [1951] 102 Cal. App. 2d 385, 403, 227 P 2d 494).

There is, in Michigan, no such protection of a township territory against non-voted annexation. City commissions stand free today, the Midland Township opinion and Section 9 considered, to plan and meet secretly for adoption of a succession of annexation resolutions aimed at an unsuspecting township, each describing a selected tract containing less than 100 residents and each near or adjacent to another, and for simultaneous signature of respective petitions addressed to the State Boundary Commission.

These separate but cooperative resolutions and petitions can be filed at once without knowledge of township inhabitants in general, or if its immediately threatened inhabitants, or of the township board. Once filed, the plenary jurisdiction of the Michigan Boundary Commission clamps like a beartrap[5] upon each tract thus designed for takeover, and the otherwise plenary right of access to the judicial system has been gratuitously restricted by the opinion below:

> No vested right or legally protected interest being involved [this had to be gleaned from *Hunter*], the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.
>
> —*Midland Township v. Boundary Commission* 401 Mich. 641, 674 (1977).

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[5]
The Boundary Commission is even holding that, once a resolution and petition have been filed under Section 9, it cannot be withdrawn by consent and request of the involved city and township. Reference: "In re proposed annexation of territory in Shelby Township to city of Utica", Boundary Commission docket number 72-AR-24, ¶16, on page 4 of the commission's "Summary of Proceedings, Findings of Fact and Order", entered Feb. 8, 1974.

Some final comments upon *Weber* are pertinent.

First: The Court opened its address "to the merits of the petition"[6] by quoting the first two sentences of Hunter's sweeping dicta, which *Gomillion* had criticized (p. 605). No mention of *Gomillion* in that regard was made. The record shows that the California Court, having expounded the compelling State interest requirement at length, found and ruled that it had no application because Mr. and Mrs. Weber[7] did not constitute an "identifiable class" of electors, citing *Gordon v. Lance*, 403 U.S. 1 (1971), the ground assigned being that, the legislature having eliminated an "election" as such, there was no election in which Mr. and Mrs. Weber could participate.

Our deferentially submitted response to this is that such a conclusion cannot be reached until the statute said to have accomplished the elimination, has been found immune from constitutional attack. Furthermore, *Gordon v. Lance* is rather off the mark. There this Court definitely reviewed a straight-

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[6]

In the *Midland* case, the obvious intent was for the City of Midland to annex land from Midland Township upon which Dow Chemical is building a multi-million dollar nuclear plant – a tax base for which the City of Midland is understandably covetous, since it is even a greater tax base than the conventional utility.

In Brighton, the obvious intent was to annex valuable shopping center property.

These two instances in this consolidated case, by way of examples but not limitation, *are* a *far* cry from *Weber*.

[7]

Mr. and Mrs. Weber were the only objectors to the annexation. The tract annexed consisted of 24.7 acres, of which 4.7 acres were owned and occupied by the Webers. The tract otherwise was totally uninhabited. In that down-to-2 setting the Court held that the Webers had not been denied equal protection by the annexation.

out election by ballot. The presented issue was defined with precision in the initial sentence of the Court's opinion (403 U.S. at 2):

> We granted certiorari to review a challenge to a 60% vote requirement to incur public debt as violative of the Fourteenth Amendment.

Second: Whatever one may think of *Weber's* application of the "no identifiable class" doctrine, in bar of otherwise entitled equal protection, that would seem quite inappropriate for consideration where (a) otherwise eligible voters are selectively reduced in number by a statute permitting the practice by means of successive resolutions and petitions, each aimed at taking a "100 or less" tract, as (b) other eligible voters, residing in a nearby small or large tract which for some reason—physical or geographic—cannot be divided and conquered, are by the same statute provided the right to vote by referendum.

Saying this, we repeat that Section 9 permits, if it does not openly invite, multiple resolutions and accompanying petitions aimed at the same township with no pretense other than that the motive is piece by piece, non-balloted capture of valuable parts of that township. And here we take a respectful issue with our Michigan Supreme Court when it says:

> The motive or purpose of the city or township in drawing the proposed boundaries or in requesting a revision of boundaries is not material.
>
> —*Midland Township v. Boundary Commission* at 679.

No authority for this extraordinary doctrine, which is dramatically opposed to *Gomillion*, in the context of the right of equal suffrage, is cited or suggested. We think there is none to be found or hinted in the post-*Baker v. Carr* 369 U.S. 186 (1962), decisions of the Court to which this brief is addressed.

Third: It may be that this Court may some day rule that a statute as in *Weber,* limiting its scope to less than 12 and guarding it against abuse and inequity by permitting direct trial access to the Courts, is *de minimis* within Fourteenth Amendment equal protection. Be that as it may, Section 9 is no such statute. A mere reading of subsections (2), (4) and (7) thereof will show that its very purpose was invidious discrimination, effected by permitting unilateral voting on one side of the frontier, and by denying it on the other.

Fourth: By repetitious allusions in the opinion appealed from, the Justices seemed to have been dispositively absorbed by observations that "the annexation question is essentially political, and political considerations cannot be avoided" (at 669; 88a); that "Resolution of a controverted annexation unavoidably involves political considerations and the exercise of a large measure of discretion." (at 673; 92a); that Section 9 "poses considerable risk of drawing the judiciary into the resolution of what continues to be—despite the adoption of the administrative format—essentially a political question." (at 674; 93a),[8] and finally this (at 674; 93a):

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[8]

Until handing down last October of the decision below, it has as we believe been widely assumed that the presence of a duly submitted "political question" no longer does or should deter the courts from deciding it on merit or demerit, and that the judiciary should not shy away from such questions by leaving them largely to bureaucratic decisions reached by politically appointed commissions. *Gomillion* at 347, and *Baker v. Carr,* 369 U.S. 186 (1962), by "II" at 198, "III" at 205, and "IV" at 208, have led the way in such regard. As written in *Gomillion* at 347:

> "In sum, Mr. Justice Holmes remarked, when dealing with a related question, in *Nixon v. Herndon,* 273 U.S. 536, 540: 'Of course the petition concerns political action', but 'the objection that the subject matter of the suit is political is little more than a play on words' ".

> No vested right or legally protected interest being involved, the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.
>
> —at 674, 93a.

(The go-ahead hint of this last directive could hardly be missed by the Boundary Commission. Indeed, it is understandable that the Commission, by its doings, has aggressively guarded the cities from those "venal abuses," on the part of a "few persons" or "a small group" [at 667; 86a], which visibly concern the Court.)

Our purpose in submitting this quotational analysis of the Court's opinion is not that of questioning the prerogative of the Michigan Supreme Court in construing and applying Section 9. We recognize cheerfully that exclusive judicial function. Rather, we offer the analysis only to show (a) that Michigan, quite unlike California as shown by *Weber,* provides no plenary access to her trial courts for remedy and protection against invidious or purposefully malignant manipulation of this particular annexation statute; and (b) that California's carefully limited "less than 12 persons" class, dealt with in *Weber,* is no authority for holding that Michigan's "100 or fewer" classification sustains the burden of the Appellees to show a compelling state need for such an extreme if not corrupt statute.

In Michigan, under the procedures act mentioned (MCLA 24.201 *et seq.*), the right of access to the circuit (trial) court is "confined to the record" by section 104(3), subject only to section 105's permission to seek on circuit court review, for "good reasons," an order for the taking of "additional evidence." But even that, if granted, returns the parties to the administrative tribunal for the additional evidence, and for an additional evaluation of the whole record by the tribunal and entry as

may be indicated of a new order. In a word, our circuit courts have no power except that of review of legal questions, and are denied as in California the authority to proceed to full hearing and to entry of an independent new judgment.

One of the California cases cited in *Weber's* lengthy footnote make it clear that if "fraud was perpetrated in the matter of the boundaries or the extent of the annexed district", a remedy therefor is available in the superior (trial) court, citing *People ex rel Peck v. City of Los Angeles,* 154 Cal. 220, 97 P. 311, 313. The case, thus cited by *Weber,* is *City of Anaheim v. City of Fullerton,* 102 Cal. App. 2d. 395, 227 P. 2d. 494 (1951).

California then, does provide adequate safeguards against venality, no matter whether the annexor or annexee is the perpetrator thereof. Michigan does not.

III.

THE SINISTER CLASSIFICATIONS WHICH SECTION 9 HAS LICENSED IN ARRAY WITH THE PRINCIPLES ESTABLISHED AT THE VERY BEGINNING BY REYNOLDS V. SIMS.

A. *Section 9 Can Permit The Progressive Destruction of Townships.*

Division II of *Reynolds* (377 U.S. at 554, *et seq.*) opened the Court's discussion of these principles. At 555 and 556 Chief Justice Warren observed that the right of suffrage "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

Then by appended footnote 29, the Chief Justice elevated the 1950 dissent of Justices Douglas and Black, against summary affirmance of *South v. Peters,* 339 US 276, 279, to the level of respected authority, quoting it as follows:

> There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted . . . It also includes the right to have the vote counted at full value without dilution or discount . . . That federally protected right suffers substantial dilution . . . [where a] favored group [h] as full voting strength . . . [and] the groups not in favor have their votes discounted.
>
> *Reynolds, supra* at 555

Then the Chief Justice proceeded on page 563 to add these words which we think are of special significance:

> Weighing the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seem justifiable. One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination."
>
> —*Id.*, at 528

In our Section 9 setting the common right of voice in annexation matters, of the electors of a Home Rule City, is truly representative. The City Council is elected to represent the people of the city and act independently in their behalf. The city electors' right of suffrage is thus guaranteed by representation to the high standard of equal protection.

The electors of the city, by that representation, have voted for each Section 9(7)(a) resolution which the Council and City

Manager have drawn up to avoid the more than 100 persons class, always retaining some semblance of contiguity no matter how physically "uncouth" (yes, from *Gomillion* at 340) the latter might have to be.[9] This follows because the city is become a true municipal corporation. (Sec. 1. Each organized city shall be a body corporate, MCLA §117.1).

But the *opposite* is true of Michigan townships. There it is the *inhabitants* that make up the body corporate,[10] and their elected representatives consisting of the township board of trustees (7 in number) have only such legislative powers as the State legislature has chosen to supply. So the discriminatory assault of section 9 is aimed directly, not alone at the township at large, but at the inhabitant electors thereof, class by class to destroy separately their hitherto known right to vote for or against annexation petitions.

The point made here is that the government of a Home Rule City is based upon a charter the electors themselves have

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[9]

One such resolution and petition, now at issue before the Boundary Commission, pales by comparison the critical shape of that which, in Massachusetts 117 years ago, Governor Gerry's legislature drew up and enacted. It would annex an approximate square mile of a long north-south fractional township, cutting it but leaving a *small* but *more* than 100 residential area of the township hemmed-in by the city on 3 sides, with no direct access to the rest of the township and with the fourth side blocked physically by the multiple main line tracks of an international railroad (Canadian National-GTRR, connecting Chicago with Toronto and Montreal), plus those of another through and paralleling railroad, the Chesapeake and Ohio.

[10]

Since 1846 section 2 of the Michigan Township Law has provided (MCLA §41.2):

> The inhabitants of each organized township shall be a body corporate, . . .

adopted, subject only to such statutes as may modify or extend that charter; that those electors are represented for all governmental purposes by their elected councilmen, and that they have vested with the City Council the right and power to proceed legislatively just as State legislators do on behalf of their constituents.

In the township, however, the status of the people is different. They either have the right to vote as before in accordance with constitutional legislation, or they have been unconstitutionally classed out of rightful voice in the determination of annexational proceedings that are sure to affect them, adversely or prosperously. The discrimination favoring city voters over township voters, the subject being annexation by the city of township territory, with no voice permitted the township inhabitants, is evident.

All this says nothing of the specific classes of township residents which section 9 designates for separate treatment. One (less than 100) is culled out for sentence to city government where, unlike the close-to-the-people government of a township, intrigue and corruption find their devious ways less difficult. The other is that group of township residents, *more* than 100 in number, that finds itself surrounded or nearly so by callous gerrymandering, and yet is *excluded* from the annexational process by the fact that ***their greater number has eliminated them from the scope of the resolution and petition the annexers have filed,*** a process that usually leaves them on an island or peninsula of township territory.

There can be little doubt that section 9's permissible classifications, if left intact, will permit the appellee Commission, with discretion limited only by that ever-elastic adjective "rea-

sonable", to progressively dismember and ultimately gut city-adjacent townships.[11]

B. *The Classification Cases Cited by Appellees are Not Applicable.*

McGowan v. Maryland, 366 US 420 (1961) is relied upon by the Michigan Attorney General (P. 7 of Brief) and Novi (P. 28 of Brief) as precedent for the classification of 100 or less in Michigan Home Rule, Sec. 9, referred to above. *McGowan* has no such precedential value.

McGowan, as part of Marylands' blue laws, simply classified some *commercial* activities as prohibited and others permitted on Sunday. The Court did not overrule such classification.

McGowan did not involve the fundamental constitutional right of voting—a constitutional "suspect classification" demanding a "compelling state interest" and "strict scrutiny" by this court for any constitutionally permitted limitation as contracted to commercial blue laws that do not involve a constitutional right or suspect classification referred in *Kramer v. Union Free School District No. 15*, 395 US 621 (1969) and the myriad of other voting rights cases.

The other "classification' cases cited by Novi (P. 28 of Brief) are equally inapplicable.

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[11]

To this situation it would seem that the conclusion of the court, in *Truax v. Corrigan*, 257 US 312, 336, is directly applicable:

> "If this is not a denial of the equal protection of the laws, then it is hard to conceive what would be. To hold it not to be, would be, to use the expression of Mr. Justice Brewer in *Gulf, Colorado & Santa Fe R. Co. v. Ellis*, 165 US 150, 154 to make the guaranty of the equality clause 'a rope of sand.'"

1. *Village of Belle Terre v. Boraas*, 416 US 161 (1974).

This Court upheld a classification in a zoning ordinance distinguishing it from fundamental voting rights cases by stating:

> It [the zoning ordinance] involves no fundamental right guaranteed by the constitution such as voting, *Harper v. Virginia Board*, 383 US 663 . . .

2. *Atlanta Bowling Center, Inc. v. Allen*, 389 F2d, 713 C 5 CA (1968).

In this case, a bowling alley claimed a denial of equal protection when it was denied a license to sell liquor by the glass in their Boom Boom Room. No claim was ever made that this was a constitutionally protected right or a suspect classification. It is no precedent for granting some citizens the right to petition and vote on annexation, and deny it to others, as in the present case before this Court.

3. *Alkire v. Carlsman*, 350 F. Supp. 360, *aff'd* memo 377 F. 2d. 480 (1972).

An Ohio statute required cities over 5,000 to fluoridate water. Complaints claimed classification was a denial of equal protection. This was a health statute under the police power of the state—not a "suspect classification". The Court upheld it saying:

> There is no federal constitutional requirement that a state exercise its police powers to the fullest extent, at any given time . . .
>
> —*Id.*, at 364.

The Court further reasoned such classification would:

> . . . reach an optimum number of citizens, at the least possible cost, utilizing the greatest efficiences of scale.
>
> —*Id.*, at 364.

A legislative classification not involving constitutional right.

4. *Adams v. City of Colorado Springs*, 308 F. Supp. 1397, 399 U.S. 901, 400 U.S. 855 (1970), page 29 Novi Brief.

The United States District Court upheld a geographical classification for annexation stating:

> Greater or lesser contiguity with a municipality is about the *only reasonable test* for the legislature to provide for unilateral annexation.
>
> —*Id.*, at 1404.
> Emphasis added.

Thus, *Adams* is not precedent for the case since it applies only to geography, in fact, by inference is precedent *against* appellees, since the case at bar involves people, not acreage.

5. *Thompson v. Whitley*, 344 F. Supp. 480 (1972).

The lower court failed to use the "strict scrutiny" test in the factual situation of limiting certain persons voting rights on annexation.

6. *Murphy v. Kansas City, Missouri*, 347 F. Supp. 837 (1972).

This case misapplied *Hunter* by stating:

> Thus, neither the *Cipriano* nor the *Kramer* case is applicable to limit the power of the State of Missouri or the City of Kansas City regarding the annexations proceedings as declared in *Hunter*.
>
> —*Id.*, at 841.

7. *Doyle v. Municipal Commission of the City of Minnesota*, 349 F. Supp. 841 (1972).

This case did not involve permitting some to petition and vote on annexations and denying such right to others, and so is factually different from the case at bar.

8. *Forks v. City of Warren*, 273 N.E. 2d. 856 (1971).

The facts were different than the case at bar, since there was no classification of some getting to vote depending on population of area to be annexed. The Court failed to apply "strict scrutiny".

9. *City of Monticello v. Adams*, 200 N.W. 2d. 622 (1972).

The Court misapplied *Hunter*, at page 524.

The factual situation differed in that the annexing city in *Monticello* showed it could provide substantial services to annexed territory of water, sewage, fire and police protection, garbage collection, etc. (page 523) and could arguably be an exercise of police power *not factually shown* in the case at bar, *nor required to be shown by Michigan annexation laws.* (Section 9).

C. ***In Arguendo, Even if "Strict Scrutiny", "Fundamental Rights", and "Compelling State Interest are Not the Applicable Standards, Section 9 Still Does Not Meet the Reasonable Classification Test.***

Appellees cite *ad infinitum* cases upholding "reasonable classification" as opposed to "strict scrutiny."

The drawing of the line to deny voting rights to people in the area to be annexed, the balance of the township, and the city at 100 residents is *not* reasonable.

Admittedly, there are many situations where the legislature *does* draw a line that may seem arbitrary but in fact and law is reasonable. In civil law, a line for the age of majority may be drawn at 18 or 21. Yet, everyone knows of a 16-year-old who is more mature than a particular 60-year-old. A speed limit of 40 miles an hour does not ignore the fact that some drivers at 30 miles an hour are more dangerous than others at 50 miles an hour.

IN THESE, AND MYRIADS OF OTHER CASES WHERE A LINE IS DRAWN, THE INDIVIDUAL DOES *NOT* HAVE ANY EFFECT ON WHERE THE LINE IS DRAWN.

IN THIS CASE, THE CITY WANTING TO ANNEX PART OF A TOWNSHIP CAN MANIPULATE "THE LINE" SO AS TO CAUSE MISCHIEF AND THE CONSTITUTIONAL DEPRIVATION OF THE RIGHT TO VOTE TO RESIDENTS, BOTH OF THE TOWNSHIP AND THE CITY.

As shown on page 93 of the Jurisdictional Statement, *all* 23 resolutions for annexation filed in 1978 *after* the Michigan Supreme Court decision in this matter were for areas of 100 or less residents!

Thus, the "drawing of this line" at 100 or less results in cities utilizing that option 100 percent of the time denying citizens the right to vote on referenda.

A city, by carving out units of a township at 100 or less per annexation, can in a piecemeal fashion annex *all* the valuable tax base of a township, leaving only an area where residents need vital government services but can't afford them. (This amounts to cutting a dog's tail off an inch at a time until the dog is decapitated).

In fact, certain township have been so gerrymandered that they are not even a contiguous whole. See, for example, Lansing Township in Ingham County, Michigan, consisting of 7 unconnected parcels.

Following are examples of the classifications established by Michigan law:

1. A petition for annexation of all or part of a township may be filed by a resolution of the annexing city, MCLA 117.9(7)(a) Appendix 170a. *But no provision is made for a township or village governing body to propose annexation of a city in whole or in part.*

2. If an annexation resolution or petition is filed and the area to be annexed is 100 or less, there can be no referendum petition filed by one and the action of the Michigan Boundary Commission is final subject only to possible and limited judicial review. MCLA 117.9(4), Appendix 169a.

3. If the area approved by the Boundary Commission for annexation contains over 100 persons, a referendum may be filed by obtaining signatures of 25% of the registered voters in any one of the following classifications:

(a) the area to be annexed, *or*

(b) the annexing city, *or*

(c) the balance of the township to be annexed.

4. If the referendum is held, it can be defeated by a negative majority in any one of the three following categories:

(a) the area to be annexed, *or*

(b) the annexing city, *or*

(c) the balance of the township to be annexed.

Thus, the right to petition for a referendum and vote on same is granted each of these categories (residents of area to be annexed, of annexing city, *and* balance of township) and annexation must be approved by a majority in each of the three categories to be effective, *if there are 100 or more in the area to be annexed.* MCLA 117.9(5), Appendix 169a.

If there are 100 or less in the area approved by the Boundary Commission for annexation, *there can be no referendum by any of three named categories.* MCLA 117.9(4), Appendix 169a.

The practical effects of these discriminatory provisions are as follows:

1. *The 100-or-less resident class.* This is the favorite of the cities, for it forecloses parcel by parcel all right of suffrage in a township and is jurisdictionally invocable by means of the cities' authority to select *ex parte* the target class by drawing lines on a township map and preparing a legal description, both for attachment to the cities' upcoming petition to the Boundary Commission.

The city may draw these lines anywhere it chooses over and about the map, just so long as a two feet or more of contiguity

with a city boundary is maintained, and less than the permitted 100-or-less residents live in the chosen enclosure.

So it may easily be seen that class designated by section 9 as "100 persons or less" is a crafty misnomer. That class can be safely enlarged by the marauding city to, say 1000 residents, simply by drawing each of ten or eleven simultaneous or rapid fire resolutions and petitions, with successive contiguity maintained, so that each set includes 100 persons or less in residence.

2. Section 9 openly authorizes the filing of each resolution and petition, one pair after the preceding pair and so on, always maintaining some minute or substantial point or points of contiguity, so that the desirable parts and portions of adjacent townships are confiscated with nary a voice allowed the township's inhabitants, or any of them, by resort to the voting booth, and with the undesirable or poor remaining portions of the township left fragmented, sometimes actually separated, and helpless for financial reasons to maintain any fair semblance of township government.

IV.

THE DEVELOPMENT OF THE LAW ON VOTING RIGHTS SINCE *HUNTER* WAS DECIDED IN 1907 PROHIBITS A CLASSIFICATION BASED ON POPULATION.

A. *Chronology of State of the Law on Voting Rights Under the Equal Protection Clause.*

The following chronology highlights the growth of the law on voting rights under the Equal Protection Clause of the Fourteenth Amendment.

1. *1907-Hunter v. Pittsburgh, 207 U.S. 161.* The question of Equal Protection was not even raised because it was accepted by all parties that the Equal Protection Clause did not apply.

2. *1946-Colegrove v. Green, 328 U.S. 549.* In *Colegrove,* the Illinois legislature—itself badly malapportioned—established congressional districts within the State of Illinois that were also badly apportioned.

Justice Frankfurter wrote for the majority stating that the relief sought was 'beyond its [the Court's] competence to grant". (Page 552). Justice Frankfurter, in dicta, further stated:

> "Courts ought not to enter this political thicket."
>
> —*Id.,* page 556.

Justice Black, in a dissent joined by Justices Douglas and Murphy, prohetically state in reference to the malapportioned Illinois Congressional Districts:

> "The Equal Protection Clause of the Fourteenth Amendment forbids such discrimination."
>
> —*Id.,* Page 569.

3. *1967-Gomillion v. Lightfoot, 364 U.S.* 339. The State of Alabama redefined the boundaries of Tuskegee to exclude all but four or five Negro voters from the city but not exclude a single white.

Justice Frankfurter wrote the opinion for an unanimous court, declaring such state action unconstitutional. He relied on the Fifteenth, not the Fourteenth Amendment. He severely limited his opinion in *Hunter* by saying:

> To exalt this (state power to establish local boundaries) power into an absolute is to misconceive the reach and rule of the Court's decisions in the leading case of *Hunter v. Pittsburgh,* 207 U.S. 161, 52L. Ed. 151, 28 S.Ct. 40, and related cases relied upon by respondents.
>
> *Id.,* at 342.

Justice Frankfurter reversed his "political thicket" dicta of *Colegrove* by affirmatively quoting Mr. Justice Holmes:

> Of course the petition concerns political action; but the objective that the subject matter of the suit is political is little more than a play on words.
>
> —*Id.,* at 347.

4. *1962-Baker v. Carr, 369 U.S. 186. Baker v. Carr,* so well known to this Court, established the principle that the Equal Protection Clause applies to state legislative districts and the lack of equality is a justiciable issue. Justice Frankfurter, who wrote the majority opinion in *Colgrove* deny relief for malapportionment, was consistent in *Baker,* where his vigorous opinion was that of a dissenting minority. Thus, the law evolves and grows.

The setting of *standards* for equality was left to *Reynolds v. Sims,* cited next.

5. *1964-Reynolds v. Sims, 377 U.S.* 533. The Court stated in no uncertain terms:

> Diluting the weight of votes because of *place of residence* impairs basic constitutional rights under the Fourteenth Amendment just as much as insidious discriminations based upon factors such as race, *Brown* v *Board of*

> *Education,* 347 US 483 . . ., or economic status, *Griffin v Illinois,* 351 US 12 . . ., *Douglas* v *California,* 372 US 353 . . .
>
> —*Id.,* at 566.
> Emphasis Added.

In this case, the right to vote is diluted 100 percent to the point it is non-existent.

A person in an area proposed for annexation of more than 100 residents has an absolute right to petition and vote on a referendum, *as do those in the balance of the township and the annexing city.*

If 100 or less reside in the area to be annexed, none has the right to petition or vote on a referendum.

If a person lives in a city, that city council can petition for annexation of part of a township. If a person lives in a township, that person's local government cannot petition to annex a portion of a city.

Residency determines (1) whether a voter's local government can initiate annexation and (2) whether a voter can initiate a petition for referendum and (3) whether a voter can vote on an annexation referendum.

All these limitations based on residency are violative of the Equal Protection Clause.

The Court also said in *Reynolds*:

> One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination'.
>
> *Id.,* at 563.

The Michigan Boundary Commission, no matter how artfully drawn cannot, in a sophisticated fashion, indirectly deny the right to vote that cannot directly be denied.

The United States Constitution does not prevent a state legislature from establishing local boundaries on a reasonable basis by a legislature based on one-man, one-vote. The Equal Protection Clause *does* prohibit granting some persons a vote but denying it to others based on residency.

Admittedly, a state legislature could divide a state into *all* counties, *all* cities, or *all* townships or even provide for legislation *only* by the state legislature with *no* local government —and still not violate the United States Constitution.

What the state *cannot* do is establish local units of government and let *only* women vote, only property owners vote, only Latinos vote, only people living on the south side of the street but not the north side, or only those in units to be annexed of over 100 residents.

6. *1969-Ciprianc* v. *Houma, 395 U.S. 701.* In this case, the question was raised whether an otherwise qualified voter who paid no property taxes could be precluded from voting on a municipal bond issue. This court applied the Equal Protection Clause to such an election by holding:

> As we noted in Kramer, supra, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others,[4] "the Court must determine whether the exclusions are necessary to promote a compelling state interest." Kramer v Union Free School District No. 15, supra, at 627, 23 L Ed 2d at 589.
>
> —*Id.,* at 704.

7. *1977-Lockport v. Citizens for Community Action, 430 U.S. 259.* The State of New York passed a statute that permitted a new county charter to go into effect *only* if approved by a majority of each of the city and non-city voters.

This Court held such a "dual box" voting system did not violate the Equal Protection Clause.

This is a similar situation that applies under Michigan law if the area for proposed annexation *exceeds* 100. (MCLA 117.9[5]). There must be a majority vote of approval by (1) the city, (2) the part of the township to be annexed, and (3) the balance of the township, if a referendum is held. This is a "triple box" rather than the "double box" of *Lockport*.

SUMMARY OF PRESENT STATE OF THE LAW

The current state of the law is that the Equal Protection Clause prohibits discrimination on the basis of residency for all elections including referenda, unless such discrimination is shown as necessary under the strict scrutiny test for a compelling state interest.

The Michigan Court did not interpret *Hunter* or other cases correctly, ignored *Gomillion* and *Lockport*, and failed to apply the "strict scrutiny" and "necessary for compelling state interest" tests.

B. ***The Michigan Court further erred where it applied only the "reasonable relation" and "appropriate means" test to meet the Equal Protection Clause, not the "strict scrutiny" test.***

> We are of the opinion that the challenged classification bears a substantial relation to the object of the legislation[24] providing a means appropriate to the resolution of disagreements concerning annexation of territory to a city.[25]

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[24] *Manistee Bank & Trust Co v McGowan*, 394 Mich 655, 668; 232 NW2d 636 (1975).

[25] In so holding we do not reach the city contention that the Equal Protection Clause does not apply to an annexation.

> —*Midland Township v. Boundary Commission*, 401 Mich. 641, 666-67 (1977)
> Appendix 85a-86a

Footnote 25 is particularly revealing in that the double negative shows the court considered the Equal Protection Clause applicable but simply misapplied it by failing to use the strict scrutiny standard.

The bland statement of the court is simply a conclusion with no basis in fact, as in *Weber*, cited above.

V.

THIS COURT HAS JURISDICTION OF THIS MATTER

The Michigan Supreme Court in its opinion in this matter stated:

> A. *EQUAL PROTECTION*
>
> In the instant annexations fewer than 100 persons resided in the territories to be annexed.
>
> The townships and individual plaintiffs, acknowledging the principles enunciated in *Hunter*, assert that while the

Legislature may provide for annexation without an election is it violative of the *Equal Protection Clause* to provide for a referendum where more than 100 persons reside in the territory to be annexed and deny a referendum where 100 persons or fewer reside in the territory.

—*Midland Township v. Boundary Commission,* 401 Mich. 641, 666
Appendix 85a
Emphasis added.

Thus, the Michigan Court, by its heading "A. EQUAL PROTECTION" and the capitalized "Equal Protection Clause," was clearly referring to the Fourteenth Amendment of the United States Constitution, allegations of Appellee Novi to the contrary, notwithstanding.

The Attorney General, attorney for the Boundary Commission Appellee under Michigan's Constitution, did not even raise the questions of jurisdiction, and Appellee Novi, which was a permissive intervenor and not the principal defendant, must accept the case as presented by the principal party and cannot raise defenses which the primary defendant has conceded.

The Attorney General in the brief in opposition to application for a stay in this Court stated, at page 2:

> The issues addressed by the Michigan Supreme Court included, among other things, whether there had been a violation of the equal protection clause of the federal constitution by providing for a referendum where more than 100 persons reside in the territory to be annexed and denying a referendum where 100 persons reside in the territory.

The federal question was also considered in the Attorney General's brief in support of their motion to dismiss or affirm:

> The Michigan Supreme Court unanimously upheld the authority of the State Boundary Commission and found that the contentions of the townships pertaining to alleged violation of the Federal Constitution, state constitution, and state law were without merit. Specifically, the Michigan Supreme Court, after careful examination of federal case law, concluded that there had been no violation of the equal protection guarantees afforded by the Fourteenth Amendment to the United States Constitution and stated:

—Motion to Dismiss or Affirm, Attorney General of Michigan, p 3.

In *arguendo,* if there is any ambiguity, which Appellants deny, we would argue that this Court's edicts in *Herb v. Pitcairn,* 324 U.S. 117 (1944) must be observed. Therein, this Court said that even though it would not normally review judgments of state courts that rested on adequate and independent state grounds, it would not follow that this Court would refuse to protect its jurisdiction when given reasonable grounds to believe it exists. In fact, this Court said:

> . . . In proper cases we will impose the duty of applying for it [review of a federal question] upon petitioner or appellants on our own motion.

—*Id.*, at 128.

Importantly, Mr. Justice Black, in his dissent, which was concurred in by the three remaining Justices, Justices Douglas, Murphy and Rutledge, argued that there was no question but that a federal issue had necessarily been involved before the state court and that the U.S. Supreme Court should, therefore, accept jurisdiction without further judicial delays.

The similarity of the Equal Protection Clauses of both the federal and state constitutions is apparent by a reading of the language of each, which follows:

> No person shall be denied the equal protection of the laws . . .
>
> —Mich. Const. 1963, art. 1, §2.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*
>
> —U.S. Const. Am XIV
> Emphasis added.

Appellee Novi must be aware that to avoid the merits of the issue will only force some townships in the immediate future to raise the federal equal protection issue, if in ***arguendo,*** it is not ruled on now since there are a plethera of "100-or-less" annexations underway and since this was not a class action, each and every annexation of "100-or-less" can result in litigation based on the Fourteenth Amendment Equal Protection Clause one or more of which would end up in this Court, with the identical constitutional issue that is now before this Court.

Delay can only result in judicial and political mischief.

RELIEF

WHEREFORE, this Court is asked to:

Deny the Motions to Dismiss or Affirm;

Accept jurisdiction in this matter and decide *sua sponte* in favor of Appellants, or grant the appeal;

In the alternative, remand this matter to the Michigan Supreme Court with the order that Court review *Hunter* in view of *Gomillion* and these pleadings.

Respectfully submitted,

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April 17, 1978.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

Supreme Court, U. S.
FILED
APR 13 1978
MICHAEL RODAK, JR., CLERK

No. 77-1285

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON, et al,

Appellants,

vs.

MICHIGAN STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF MIDLAND, a Municipal Corporation,

Intervening Defendant-Appellee,

et al.

On Appeal From the Supreme Court of Michigan

MOTION TO DISMISS OR AFFIRM

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No. 77-1285

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

TOWNSHIP OF MIDLAND, et al,

Appellants,

vs.

MICHIGAN STATE BOUNDARY COMMISSION, et al,

Appellees,

On Appeal From the Supreme Court of Michigan

MOTION TO DISMISS OR AFFIRM

City of Novi, intervening Defendant-Appellee, moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Michigan on the following grounds:

1. The Federal question sought to be reviewed was neither timely nor properly raised nor expressly passed on by the Supreme Court of Michigan.

2. The appeal does not present a substantial Federal question.

STATEMENT

This is an appeal from a Decision of the Supreme Court of Michigan entered on October 24, 1977, and an Order Denying Rehearing entered December 16, 1977 by the Supreme Court of Michigan. The Decision of the Michigan Supreme Court is reported at 401 Mich 641 (1977) and is set forth in Appellants' Appendix to Jurisdictional Statement (hereinafter referred to as the Appendix) at 60a-101a. The Order Denying Rehearing is set forth in the Appendix at 166a-167a.

The instant case is comprised of three (3) consolidated actions brought by Appellants in an attempt to overturn orders approving annexations entered by the State of Michigan Boundary Commission. Appellants challenged the sufficiency of certain procedural aspects of the Boundary Commission's proceedings and challenged the constitutionality of 1970 Public Act 219 (MCLA 117.9) as being violative of the Constitution of the State of Michigan. Appellants did not challenge the constitutionality of 1970 PA 219 as being violative of the Constitution of the United States until it filed its Application for Rehearing in the Michigan Supreme Court, which Application was denied without discussion of the issues raised.

The text of 1970 PA 219 is set forth in the Appendix at 168a-172a. This statute vests authority over annexation proceedings in the Michigan State Boundary Commission, a statutorily created state agency (MCLA 123.1001, et seq). 1970 PA 219 also sets forth the procedures to be followed in annexation proceedings, and incorporates the eighteen (18) statutory criteria which the Boundary Commission is required to consider in determining whether to approve or deny a proposed annexation (MCLA 123.1009). The approval of the Boundary Commission is required to effectuate all annexations. Final decisions of the Boundary Commission are subject to judicial review pursuant to state statute (MCLA 123.1018; MCLA 24.306) and pursuant to the State of Michigan Constitution (Michigan Constitution of 1963, Art 6, §28).

1970 PA 219 further provides that if a proposed annexation is approved by the Commission and there resides one hundred (100) persons or less in the area approved for annexation, the Commission's order shall not be subject to a referendum (Section 4; Appendix at 169a). If a proposed annexation is approved and more than one hundred (100) persons reside in the area approved for annexation, the Commission's order approving annexation is final in thirty (30) days unless, within that time, a proper petition for referendum is filed. If such a petition is filed, a referendum on the annexation is held (Section 5; Appendix at 169a).

In their appeal to this Court, Appellants challenge the constitutionality of 1970 PA 219 as being violative of the Fourteenth Amendment of the United States Constitution. Appellants now contend that the granting of a right of referendum for areas having a population of more than one hundred (100) persons and failing to provide for such a procedure in sparsely populated areas constitutes a denial of equal protection of the laws in violation of the Fourteenth Amendment.

This issue was not presented to nor passed upon by the Michigan Supreme Court. In the Michigan Supreme Court, 1970 PA 219 was only challenged as being violative of the Equal Protection provision of the 1963 Michigan Constitution (Art. 1, §2).

The Michigan Supreme Court held that 1970 PA 219 did not violate the Michigan Constitution, as no city, village, township or person has any vested right or legally protected interest in the boundaries of such governmental units and that the providing of an opportunity for referendum

where more than one hundred (100) persons reside in the territory to be annexed and denying a referendum where one hundred (100) persons or less reside in such territory bears a substantial relation to the object of the legislation (Appendix at 82a-86a).

Appellee, City of Novi, does not accept the Statement of the Case contained in Appellants' Jurisdictional Statement for reason that such Statement is replete with error. For example, Appellants erroneously state that the Novi annexation petition excluded a parcel of Novi Township to avoid a possible referendum (Appendix at 19a-20a). This is in error. However, this and numerous other errors contained in Appellants' Statement of the Case do not directly relate to the instant Motion and will not be discussed at this time.

There are, however, certain other errors contained in Appellants' Statement of the Case which are relevant to this Motion to Dismiss or Affirm.

At pages 15-16 of Appellants' Juridictional Statement, it is alleged that the Petition for Review filed in the Ingham County, Michigan, Circuit Court, with respect to the Novi proceeding challanged 1970 PA 219 as violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. To state it simply, this allegation is totally false. No such challenge was made to the subject statute based upon the United States Constitution.

At pages 22, 25 and 30, of their Jurisdictional Statement, Appellants state that in the Michigan Supreme Court, they argued that 1970 PA 219 violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Again, this allegation is totally false.

The first time that any Federal constitutional question was presented to the Michigan Supreme Court was in Appellants' Application for Rehearing, which Application was denied without opinion by the Michigan Supreme Court.

Appellee, City of Novi, submits that the Federal question sought to be reviewed herein was neither timely nor properly raised nor expressly passed on by the Michigan Supreme Court.

Appellees further submit that the instant appeal does not present a substantial Federal question, for reason that the point of law ought to be reviewed by Appellants has been clearly decided heretofore by this Court, by other courts in the federal judicial system and by numerous state courts, all contrary to Appellants' position.

ARGUMENT

I.

THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NEITHER TIMELY NOR PROPERLY RAISED NOR EXPRESSLY PASSED ON BY THE SUPREME COURT OF MICHIGAN. THIS COURT IS WITHOUT JURISDICTION OF THIS CASE UNDER 28 U.S.C. § 1257 (2).

Each of the consolidated cases at bar was commenced by the filing of a Petition for Review filed in the Circuit Court for the County of Ingham, Michigan. With respect, at least, to the Novi proceeding, Appellants did not challenge the constitutionality of 1970 PA 219 as being violative of the United States Constitution (Appellants admit that the Decisions of the Trial Court and Michigan Court of Appeals were based upon state constitutional grounds. See Jurisdictional Statement at 21, 22).

As such, even if Appellants had attempted to raise such an issue in the Michigan Supreme Court, the Court would not have considered it, for reason that under Michigan jurisprudence, issues not raised at the trial court level will

not be considered on appeal. *Grossman Building Co.* v. *Elliott,* 382 Mich 596, 171 NW2d 441 (1969); *Therrian* v. *General Laboratories, Inc.,* 372 Mich 487, 127 NW2d 319 (1964).

However, Appellants did not raise a Federal constitutional issue before the Michigan Supreme Court. There is no allegation in the Townships' Brief to the Michigan Supreme Court that 1970 PA 219 is violative of the United States Constitution. Instead, this statute was attacked only on the Equal Protection provision of the 1963 State of Michigan Constitution. This is clearly evidenced at page 17 of the Townships' Brief of Cross-Appellants in the Michigan Supreme Court wherein the Townships alleged as follows:

> "... Where such referendum rights are tendered to some and denied to others whose situation is not distinguishable on rational grounds there is violation of Art. 1, § 2 of the 1963 Michigan Constitution, which guarantees equal protection under the law."

Nowhere, in any of the Briefs filed by Appellants in the Michigan Supreme Court prior to the hearing of this cause was any provision of the United States Constitution even cited as an authority.

On October 24, 1977, the Michigan Supreme Court issued its Decision in this case. There is no indication, much less an express statement, that Appellants' equal protection argument was considered and decided under the United States Constitution.

Appellants thereupon filed an Application for Rehearing in the Michigan Supreme Court, wherein, for the first time, it was alleged that 1970 PA 219 was violative of the Equal Protection provision of the United States Constitution. (In this regard it is of importance to recognize that the *only* pleadings which Appellants saw fit to include in their Appendix to this Court was the Application for Rehearing

filed in the Michigan Supreme Court and the Brief in Support thereof.)

On December 16, 1977, the Michigan Supreme Court denied Appellants' Application for Rehearing, stating:

> "In this cause an application for rehearing and a motion for stay order are considered and they are hereby DENIED." (Appendix at 166a-167a)

It is clear that the Federal constitutional issue which Appellants are attempting to raise in their appeal to this Court was not drawn into question in the state Court so as to vest jurisdiction of this appeal in this Court pursuant to 28 U.S.C. § 1257 (2).

This Court has consistently held that it is without jurisdiction where the Federal question sought to be reviewed was raised for the first time in a petition for rehearing in the highest court of the state and the rehearing was denied without an express determination of the Federal question. See *McMillen* v. *Ferrum Mining Company,* 197 U.S. 343 (1904); *Rooker* v. *Fidelity Trust Company,* 261 U.S. 114 (1922); *Herndon* v. *State of Georgia,* 295 U.S. 441 (1935); *Chicago, Indianapolis and Louisville Railway Company,* 196 U.S. 128 (1905); *Forbes* v. *State Council of Virginia,* 216 U.S. 396 (1910) and the authorities cited in these cases.

In the case at bar, the Federal question sought to be reviewed herein was raised for the first time in the Application for Rehearing in the Michigan Supreme Court which denied the Application without a determination of the Federal question. This Court is without jurisdiction of the instant action.

Appellants may raise certain arguments in an attempt to establish jurisdiction in this Court.

Appellants may argue that because the Michigan Constitution contains an equal protection provision which is sim-

ilar to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the Decision of the Michigan Supreme Court was also based upon the Federal Constitution so as to vest jurisdiction in this Court.

Such an argument must fail. This Court has consistently held that the basis of jurisdiction in this Court must be clear and unmistakable and where there are similar provisions in a State and Federal Constitution, it is presumed that reliance is placed only upon the State Constitution, unless reliance upon the Federal Constitution is specifically enumerated.

In the case of *Bowe* v. *Scott,* 233 U.S. 658, 663 (1913) no assertion of rights under the United States Constitution was made until a Petition for Review was filed in the highest court of the state. This Court stated with respect to the question of its jurisdiction:

> "It is further urged that be this as it may there is no jurisdiction because no assertion of rights under the Constitution was made below until the petition for rehearing which was too late and the tardiness of which was not saved by the action of the Court since it simply declined to grant the rehearing without deciding the questions presented as the basis of the request for rehearing. As it is elementary that a mere assertion in a state court of a right under the Constitution of the United States in a petition for rehearing affords no ground for invoking the jurisdiction of this Court unless the Court below in dealing with the petition for rehearing considers and passes upon the Federal ground therein relied upon, we dismiss that subject from view and some to consider whether the record otherwise discloses that a Federal question was so raised below as to support our jurisdiction . . ."

In attempting to sustain the Court's jurisdiction, Appellant, in *Bowe,* claimed that it had timely alleged that the

ordinance in question deprived him of property "without due process of law." In rejecting this contention and dismissing the case for want of jurisdiction, the Court, in *Bowe,* stated at 233 U.S. 664-665:

> "The other passage in the bill is found in subdivision 'c' of the tenth paragraph and is as follows:
>
> 'That the ordinance is an attempt to take from your complainants whose property adjoins and abuts upon the said alley their rights in and to said alley without due process of law.' But it is settled that such an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this Court. *Miller* v. *Cornwall R.R. Co.,* 168 U.S. 131, 134; *Harding* v. *Illinois,* 196 U.S. 78.' "

In the case of *Gibbes* v. *Zimmerman,* 290 U.S. 326, 328 (1933), this Court stated with respect to a contention similar to that raised in *Bowe* v. *Scott, supra.*

> ". . . The Appellant, who was Plaintiff in the suit, asserts that the Act impairs the obligation of contract, in violation of the Constitution of the United States. We cannot consider this contention, since in his pleading, the Appellant relied solely on the provisions of the state constitution with respect to the obligation of contracts, and made no reference to Section 10 of Article 1 of the Federal Constitution; and the Supreme Court, in disposing of the case, did not mention or discuss that section. R. S. § 709; U.S.C. Tit. 28, § 344; *Chicago & N.W. Ry. Co.* v. *Chicago,* 164 U.S. 454, 457; *Levy* v. *Superior Court,* 167 U.S. 175, 177; *Miller* v. *Cornwall R. Co.,* 168 U.S. 131 ,134; *Bowe* v. *Scott,* 233 U.S. 658, 665."

Also see *Miller* v. *Cornwall R. Co.,* 168 U.S. 131, 134 (1897).

In the instant case, Appellants attack upon 1970 PA 219 under the Michigan Constitution does not serve as an attack upon that statute under the United States Constitution so as to vest jurisdiction in this Court.

Appellants may also allege that jurisdiction is vested in this Court because the Michigan Supreme Court cited a Federal case, *Hunter* v. *City of Pittsburgh,* 207 U.S. 161 (1907), in rendering its Decision, and therefore the Michigan Supreme Court must have been interpreting the United States Constitution.

Again, such an allegation would be without merit. This Court has held that a Federal question must appear with certainty to vest jurisdiction in this Court and citation of or reliance upon a Federal case in a state court Decision does not mean that such Decision was based upon the United States Constitution nor that a Federal question was raised.

In the case of *Levy* v. *Superior Court of San Francisco,* 167 U.S. 175, 177-178 (1896), this Court stated in dismissing the writ of error for want of jurisdiction:

> "* * * The plaintiff claimed, in the state court, that certain provisions of the state enactment referred to were repugnant to the constitution of California. But he did not, in the state court, draw in question any statute of the State upon the ground that it was repugnant to the Constitution of the United States, * * * He insists, in this court, that the enforcement of the above statutory provisions was a denial of the equal protection of the laws — a denial forbidden by the Fourteenth Amendment of the Constitution of the United States. But the record does not show that he made any such claim in the state court. The reference in the opinion of that court to the cases of *Boyd* v. *United States* and *Counselman* v. *Hitchcock* was for the purpose of ascertaining the proper construction of certain provisions of the constitution of California, not as defining rights asserted by the plaintiff under the Constitution of the United States. From the pleadings in the cause the state court had no reason to suppose that the plaintiff specially claimed that the statute in question deprived him of any right secured by the Constitution of the United States. We said in *Oxley Stave Co.* v. *Butler County,* 166 U.S. 648, that "the jurisdiction of this court to reexamine the final judgment of a state court cannot arise from inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right." See also *Louisville & Nashville Railroad Co.* v. *City of Louisville,* 166 U.S. 709. If the plaintiff intended to claim that the statute in question was repugnant to the Constitution of the United States, he should have so declared."

Also see *Osborne* v. *Clark,* 204 U.S. 565 (1907).

Finally, Appellants may argue that because the Michigan Supreme Court stated in its Order denying Appellants' Application for Rehearing that the Application was "considered", the Federal question was ruled upon.

Such an allegation would be without merit. This Court has held that an indication of "consideration" in an order denying rehearing does not satisfy the requirement that the Federal constitutional question was ruled upon so as to vest jurisdiction in this Court. Typical of these cases is *Forbes* v. *State Council of Virginia,* 216 U.S. 396, 398-399 (1910) wherein this Court stated in dismissing the writ of error:

> "An inspection of the record shows that no claim of the rights now asserted under the Federal Constitution was made until the petition for rehearing was filed after the judgment in the state court of final resort . . .
>
> "In passing upon the petition for rehearing, the supreme court of appeals of Virginia said: 'On mature consideration of the petition of the plaintiffs in error to set aside the judgment entered herein on January

16, 1908, and to grant a rehearing of said cause, the prayer of said petition is denied.'

"It has been many times held in this court that an attempt to introduce a Federal question into the record for the first time by a petition for rehearing is too late. *Loeber* v. *Schroeder,* 149 U.S. 580, 585, 37 L.ed. 856, 859, 13 Sup. Ct. Rep. 934; *Pim* v. *St. Louis,* 165 U.S. 273, 41 L.ed. 714, 17 Sup. Ct. Rep. 322."

"There is an exception to this rule when it appears that the court below entertained the motion for rehearing, and passed upon the Federal question. But it must appear that such Federal question was in fact passed upon in considering the motion for rehearing; if not, the general rule applies. (citing cases)

"But, it is alleged, the memorandum which we have quoted shows that the Virginia Court must have considered and passed upon the Federal question made in the petition for a rehearing. Except that the order is said to be upon mature consideration, it is almost word for word the order on rehearing reviewed in *McCorquodale* v. *Texas,* 211 U.S. 432, 53 L.ed. 269, 29 Sup. Ct. Rep. 146, which was held to amount to no more than a denial of the motion. See 211 U.S. 437. In that case the rule was again laid down that it was too late to raise a Federal question upon a petition for rehearing, unless the Federal question was passed upon in ruling upon the petition."

Appellee, City of Novi, submits that the Federal question sought to be reviewed was neither timely nor properly raised nor expressly passed on by the courts of Michigan. This Court should dismiss the appeal for want of jurisdiction.

II.

THE INSTANT APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Appellee, City of Novi, submits that this Court is without jurisdiction to hear the instant appeal. However, arguendo, even if such jurisdiction exists in this Court, this Court should dismiss this appeal or, in the alternative, affirm the Decision of the Michigan Supreme Court, for reason that the instant appeal presents no substantial Federal question.

A. The Subject Of Annexation Is Strictly A Political Question Which Is Not Subject To Constitutional Prohibitions.

In the case at bar, the Michigan Supreme Court did not address Appellee's contention that annexation proceedings were not subject to state constitutional prohibitions, including the Equal Protection Clause (Appendix, 86a, footnote 25).

This question was, however, addressed by the Michigan Court of Appeals in the instant case which stated as follows:

> "Several arguments are presented as to how this classification is unconstitutional or otherwise illegal. None are persuasive. The question of annexation is strictly a political one — a matter for the Legislature to regulate — and is not subject to constitutional prohibitions. *Detroit Edison Co.* v. *East China Twp. School District No. 3,* 378 F2d 225 (CA 6, 1967). Even if it were, the classification based on population would be valid as having a rational basis. See *Tribett* v. *Village of Marcellus,* 294 Mich. 607; 293 NW 872 (1940)." (Appendix 57a-58a)

This holding of the Michigan Court of Appeals is correct with respect to the Michigan Constitution and is equally valid with respect to the United States Constitution. Beginning with the case of *Hunter* v. *City of Pittsburgh,* 207 U.S. 161 (1907), this Court, lower Federal Courts and state courts have held that annexation proceedings are strictly political in nature and are not subject to Federal constitutional prohibitions. It is solely within the discretion of the state to legislate in this area and any grievance or injustice that results therefrom must find relief under state law.

This Court stated in *Hunter* at 207 U.S. 178-179:

> "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. . . . The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. . . . The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

Appellants argue that *Hunter* is no longer viable in light of this Court's Opinion in the case of *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960). In *Gomillion,* the boundaries of the City of Tuskegee, Alabama, were altered by state act from a square to an "uncouth 28 sided figure", allegedly for the purpose of denying petitioners, Negro citizens of the City of Tuskegee, the right to vote. This Court held such action by the state to be violative of the Fifteenth Amendment of the United States Constitution, as constituting invidious discrimination resulting in the denial of the right to vote on account of color.

Although *Gomillion* is not an annexation case, it has been considered in numerous annexation cases, with the party opposing annexation arguing that in light of *Gomillion, Hunter* v. *City of Pittsburgh,* is no longer sound authority. Such an argument has consistently been rejected. The Courts have adhered to the *Hunter* doctrine in holding that annexation procedures are within the sole discretion of the state and such procedures are not subject to Federal constitutional prohibitions.

In the case of *Detroit Edison Company* v. *East China Township School District No. 3,* 378 F.2d 225 (6th Cir.), cert. denied, 389 U.S. 932 (1967), an annexation of two school districts to a third school district in which Plaintiffs owned property was alleged to violate the Equal Protection Clause of the Fourteenth Amendment for reason that the statute in issue provided for annexation upon approval of voters in the annexed area but was not subject to the approval of voters in the annexing district.

In *Detroit Edison,* the Sixth Circuit Court of Appeals, in affirming the District Court's dismissal of Plaintiffs' Complaint, held that the Equal Protection Clause of the Fourteenth Amendment did not apply to annexation procedures, as the alteration of municipal boundaries is a matter solely within the discretion of the state and is not confined by rights secured by the Federal Constitution.

In so holding, the Court of Appeals quoted extensively from *Hunter* v. *City of Pittsburgh, supra,* and then stated at 378 F. 2d 229:

> "Two other Circuits, the Fifth and Tenth, have had occasion to pass on cases where the constitutionality of a state annexation procedure was raised. As the District Court noted, both Courts of Appeals relied on *Hunter* v. *City of Pittsburgh* in affirming dismissals of their respective cases." [citing *Hammonds* v. *City of Corpus Christi,* 343 F. 2d 162 (5th Cir.), cert. denied, 382 U.S. 837, (1965); *International Harvester Co.* v. *Kansas City,* 308 F. 2d 35 (10th Cir. 1962), cert. denied, 371 U.S. 948, (1963)].
>
> "With respect to the annexation issue, plaintiffs' reliance on the relatively recent apportionment cases is misplaced. . . . However, as the District Court noted, the reapportionment cases 'create no constitutional rights in affecting citizens concerning the *procedure* for creating or altering' any type of state district. The judgment of the District Court with respect to the annexation issue will hereinafter be affirmed; reference is made to the well reasoned opinion of District Judge Theodore Levin reported at 247 F. Supp. 296, wherein the cases of *Gomillion* v. *Lightfoot,* 364 U.S. 339, 81 S. Ct. 125, 5 L.Ed. 2d 110 (1960) and *Carrington* v. *Rash,* 380 U.S. 89, 85 S. Ct. 775, 13 L.Ed. 2d 675 (1969) are shown to be inapposite." (Emphasis in original)

In the *Detroit Edison* case, the Sixth Circuit referred specifically to the District Court's Opinion with respect to that Court's discussion of the case of *Gomillion* v. *Lightfoot, supra.* The District Court's Opinion is reported at 247 F. Supp. 296 (1965) wherein the Court set forth a detailed examination of annexation procedure cases with respect to the Fourteenth Amendment and discussed apportionment cases such as *Gomillion.* The District Court demonstrated that the *Hunter* doctrine is still as viable as ever and that annexation procedures were not within the

purview of the Federal Constitution. The Court stated as follows:

> "Any alteration of municipal boundaries is a matter within the complete discretion of the state and not confined by any rights secured by the federal constitution. *Hunter* v. *City of Pittsburgh,* 207 U.S. 161, 28 S. Ct. 40, 52 L. Ed. 151 (1907) . . ."
>
> "Recently, the Supreme Court had an occasion to limit this broad language to the specific provisions considered in Hunter — the impairment of contracts and due process. In *Gomillion* v. *Lightfoot,* 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960), the Court held that a complaint stated a cause of action when it alleged alterations in the boundaries of Tuskegee, Alabama, disenfranchised Negroes in violation of the Fifteenth Amendment. The Hunter rule is not an absolute, the Court said, and must yield to the specific limitation of the Fifteenth Amendment."
>
> "*Gomillion* does not diminish the authority of Hunter in annexation *procedure* cases. The Court specifically characterized the problem as the municipal disenfranchisement of Negroes. In fact, the Court rejected the plaintiffs contention based on the equal protection provision. Both the Fifth and Tenth Circuits have subsequently held that Hunter forecloses a challenge to an annexation procedure based on the equal protection provision. Hammonds v. City of Corpus Christi, Texas, 343 F.2d 162 (5th Cir. 1965), cert. den., 86 S. Ct. 85 (Oct. 11, 1965), affirming 226 F. Supp. 456 (S.D. Tex. 1964); International Harvester Company v. Kansas City, 308 F.2d 35 (10th Cir. 1962). State courts have reached a similar conclusion. In School Dist. of City of Lansing v. State Board of Education, 367 Mich. 591, 116 N.W. 2d 866 (1962), the Michigan Supreme Court rejected an argument almost identical to that of the plaintiffs here in connection with another provision of the Michigan School Code." (Emphasis in original)

"Plaintiffs' main argument is that Hunter v. City of Pittsburgh 'is no longer law insofar as it is inconsistent in theory with [the reapportionment cases] . . .'"

"Much uncertainty surrounds the effect of the reapportionment decisions on local government. A threshold question is whether the equal protection clause applies to *any* municipal problems, even reapportionment of representative legislative bodies." (Emphasis in original)

"The Supreme Court has not specifically extended the application of the equal protection clause beyond the composition of state legislatures and justiciability may well be limited to the state . . ."

"The Supreme Court may have resolved the issue in favor of limiting the equal protection clause. Griffing v. Bianchi, 86 S. Ct. 52 (Oct. 11, 1965). A three-judge district court had found the Suffolk County Board of Supervisors completely malapportioned. Although the court declined to act until the political agencies had an opportunity to create an appropriate governing body, it refused to dismiss the complaint because it concluded that the equal protection tests applied to the controversy. The Supreme Court disposed of the appeal with these words: 'The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction.' Perhaps the dispute is not over, but it would seem that the Supreme Court does not, at this time, see fit to extend the courts' involvement in this area."

"It is unnecessary for the court to attempt to resolve the fundamental issue, and it is sufficient to note the present uncertainty; for even if the equal protection clause applies to local government reapportionment problems, it does not follow that annexation procedures raise a justiciable issue."

"The right at stake in the reapportionment cases is that, in state representative government, the weight

of the vote of a citizen in one electoral district be approximately equal to the weight of another citizen's vote in any other electoral district. A state may not create electoral districts which have a population disparity. But this is the only limitation the cases place upon the legislative power of a state to define political boundaries. They create no constitutional rights in affected citizens concerning the *procedure* for creating or altering these districts. Even where the Court has held electoral district boundaries must be altered, it has failed to establish a specific *procedure* to accomplish this. Reynolds v. Sims, 377 U.S. 533, 585, 84 S. Ct. 1362, 12 L.Ed. 2d 506 (1964) . . ." (Emphasis in original)

• • •

"Far from implying a change in the Hunter doctrine, the reapportionment cases seem to reaffirm it. In Reynolds v. Sims, supra, the leading case in which the Supreme Court held that both houses of a bicameral legislature must be apportioned on a population basis, Chief Justice Warren quoted from Hunter with apparent approval:

> 'Political subdivisions of States — counties, cities or whatever — never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in Hunter v. City of Pittsburgh, 207 U.S. 161, 178 [28 S. Ct. 40, 52 L.Ed. 151], these governmental units are ' created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them,' and the 'number, nature, and duration of the powers conferred upon [them] • • • and the territory over which they shall be exercised rests in the absolute discretion of the state.' 377 U.S. 533, 575, 84 S. Ct. 1362, 1388.'"

• • •

"Any lingering doubts about the vitality of Hunter in the wake of the reapportionment cases should have been dispelled when the Supreme Court denied certiorari in Hammonds v. City of Corpus Christi, Texas, supra. That case is similar to this one. . . . The lower courts dismissed the complaint, relying on Hunter. While the denial of certiorari is, of course, not necessarily an agreement with the opinion below, this denial is significant in light of the Supreme Court's actions in voting cases."

"The foundation on which the Hunter doctrine has stood for half a century on the issue of annexation procedure is as sturdy as ever. This court holds, therefore, that the school district annexation procedure of the Michigan School Code, which was followed by the original East China District in forming the combined district, is a purely legislative matter. It is not justiciable under the due process or the equal protection clauses of the Fourteenth Amendment to the federal constitution."

The holding in *Detroit Edison* finds clear support in other annexation cases decided after *Gomillion* such as *Hammonds* v. *City of Corpus Christi,* 343 F.2d 162 (5th Cir) cert. denied, 382 U.S. 837 (1965) wherein the court found no error in the District Court's dismissal of the complaint on the ground, among others, that:

> "The annexation of lands to a city has been held without exception to be purely a political matter, entirely within the power of the State Legislature to regulate."

Similarly, in the case of *International Harvester Co.* v. *Kansas City,* 308 F. 2d 35 (10th Cir. 1962) cert. denied, 371 U.S. 948 (1963) the Court, after quoting from *Hunter,* stated:

> "Neither the due process clause nor the concept of equal protection is available to persons seeking to obstruct the ordinary and necessary exercise of a state's political functions."

Also see *Deane Hill Country Club, Inc.* v. *City of Knoxville,* 379 F. 2d. 321 (6th Cir.), cert. denied, 389 U.S. 975 (1967).

Appellee, City of Novi, acknowledges that the case of *Adams* v. *City of Colorado Springs,* 308 F. Supp. 1397, aff'd. mem., 399 U.S. 901 (1970), holds that annexation proceedings are subject to equal protection scrutiny. However, such a holding is in the distinct minority and with respect to this particular issue, does not set forth the clear reasoning and detailed examination of cases which was done in *Detroit Edison* and similar cases.

Appellee, City of Novi, submits that the instant case, in which a challenge is made to annexation procedures of the State of Michigan, does not concern rights which are protected by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Appellee, City of Novi, submits that there exists no substantial Federal question and that the instant appeal should be dismissed, or in the alternative, that the Decision of the Michigan Supreme Court should be affirmed.

B. Even If, Arguendo, Annexation Procedures Do Come Within Equal Protection Safeguards, The Annexation Procedure Challenged In The Instant Case Does Not Involve Fundamental Rights So As To Necessitate A Showing Of A Compelling State Interest And Need Only Meet The Test Of Having A Reasonable Basis For Classification.

In considering challenges to statutory enactments based upon the Equal Protection Clause, this Court has traditionally determined whether the statutory scheme involves a "fundamental" right. If a fundamental right is involved, the constitutionality of the statute is judged by

whether the statute promotes a compelling state interest. If a fundamental right is not involved, equal protection will be deemed to have been denied only if the classification is without a reasonable basis. *Shapiro* v. *Thompson,* 394 U.S. 618 (1969).

In the case at bar, Appellants contend that the issue before the Court involves a denial of fundamental voting rights so as to require a showing of a compelling state interest to justify the Michigan statutory annexation procedure. In making this argument, Appellants rely upon cases such as *Kramer* v. *Union School District No. 15,* 395 U.S. 621 (1969); *Cipriano* v. *City of Houma,* 395 U.S. 186 (1962); *Dunn* v. *Blumstein,* 405 U.S. 330 (1972); and *Evans* v. *Cornman,* 398 U.S. 419 (1970).

None of the cases relied upon by Appellants involve annexations. None of the cases relied upon by Appellants hold that annexation procedures involve fundamental voting rights. Further, all of the cases relied upon by Appellants have been held to be inapplicable to annexation proceedings.

The instant case does not involve fundamental voting rights nor does it involve invidious discrimination against an identifiable group.

The issue raised by Appellants, properly stated, is whether it is constitutionally permissible to determine whether an election is to be held at all based upon the number of residents in an area proposed to be annexed. See *Weber* v. *City Council of Thousand Oaks,* 9 C. 3d 940, 513 P2d 601 (1973). Such an issue does not involve fundamental voting rights. In the *Weber* case, the California annexation statute did not provide for the right to vote where the area to be annexed contained less than twelve (12) residents while a vote was permitted where the area to be annexed contained twelve (12) or more residents.

In *Weber,* the California Supreme Court, in upholding the constitutionality of the statute against an equal protection challenge, held that as the legislature could constitutionally have provided that all annexations to cities be accomplished without a vote of the residents of the territory to be annexed, the statutory procedure did not involve a deprivation of the fundamental right to vote calling for justification on the basis of a compelling state interest. In so holding, the California Supreme Court distinguished many of the cases relied upon by Appellants in the case at bar.

The Court, in *Weber,* stated at 9 C. 3d 959:

> "Plaintiffs contend that the legislative distinction between annexations of inhabited and uninhabited territory impairs their fundamental interest in their right to vote. They argue that the withholding of any opportunity to vote on annexation from groups of 11 or fewer resident voters while granting the right to more numerous groups is an infringement of the right to vote demanding close scrutiny and requiring the justification of a compelling state interest. They rely on decisions of the United States Supreme Court applying the strict test and invalidating classifications which selectively excluded particular classes of voters from participation in elections even though their interest in the outcome was as substantial as that of the persons who were permitted to vote."

The *Weber* Court then distinguished the cases of *Kramer* v. *Union School District, supra, Cipriano* v *City of Houma, supra, Carrington* v. *Rash,* 380 U.S. 89 (1969) and *Gomillion* v. *Lightfoot, supra,* stating as follows at 9 C. 3d 960:

> "All of the foregoing cases are distinguishable on the ground that in each instance the classification was designed to exclude from an election an 'identifiable class' of electors. [*Gordon* v. *Lance* (1971) 403 U.S. 1, 7 (29 L.Ed.2d 273, 277, 91 S. Ct. 1889).] When the

exclusion could not be justified on the ground that it served a compelling state interest it was held to deny equal protection of the laws. *In the instant case no issue of the exclusion of a class from participation in an election is raised; the issue instead is whether the inclusion or exclusion of any election as part of an annexation proceeding can justifiably be made to depend on the number of resident registered voters.*" (Emphasis Added)

The Court, in *Weber,* also distinguished voting rights cases such as *Harper* v. *Virginia Bd. of Elections,* 383 U.S. 663 (1966), in stating:

> "Each of these decisions, including *Curtis,* [Curtis v. Board of Supervisors, 7 Cal. 3d 942, 501 P2d 537 (1972)] involves an unconstitutional impairment of voting rights in elections actually provided for by state law, as distinct from the claim now advanced by plaintiffs that it is unconstitutional for the Legislature not to have provided for an annexation election in the circumstances of the instant case although providing for it in other circumstances."
>
> "As the Legislature could contitutionally have provided that all annexations to cities be accomplished without a vote of the residents of the territory proposed to be annexed, and as the 1939 act provides for annexation without an election, the instant case involves no deprivation of or limitation on the fundamental right to vote calling for close scrutiny or justification on the basis of a compelling state interest."

The Court, in *Weber,* also recognized that its holding was consistent with the holdings in other cases where citizens in an area to be annexed were not permitted to vote on an annexation while the applicable statute provided for referenda for annexations under certain other sets of circumstances. *Adams* v. *City of Colorado Springs,* 308 F. Supp. 1397 (D.C. Col) aff'd mem, 399 U.S. 901 (1970); *Murphy* v. *Kansas City, Missouri,* 347 F. Supp. 837 (W.D. Mo., 1972); *Garren* v. *City of Winston-Salem,* 463 F. 2d 54 (4th Cir., 1972).

In *Adams* v. *City of Colorado Springs, supra,* a right to referendum on annexation proceedings was permitted in the area to be annexed only where there was at least 1/6 but not more than ⅔ contiguity with the annexing municipality. In holding that such a statutory scheme did not involve the fundamental right to vote so as to require strict scrutiny by the Court, the Court distinguished those cases relied upon by Appellants in the case at bar, stating as follows at 308 F. Supp. 1402-3:

> "Plaintiffs seek to equate their position with that of the plaintiffs in the several voting rights cases. (citing cases) . . ."
>
> "On its face this argument appears to have merit in that the right to vote poses a sensitive constitutional issue demanding scrupulous evaluation. However, on a closer look, it does not appear that the plaintiffs' rights are of the kind that have been upheld by the Supreme Court. The factor present in the cited cases which appears to have been crucial is that the franchise was granted to one group of persons to the detriment of another group. In most instances one group had votes with disproportionate weight as opposed to a group which was partially or wholly disenfranchised, or there has been a purposeful juggling of boundaries for the purpose of excluding a particular group. *Gomillion* v. *Lightfoot,* supra . . . In the case at bar none of the described conditions are present and so it cannot be said that there exists the invidious discrimination which has been heretofore condemned by the Supreme Court. Hence, the only question which qualified for consideration is whether the Assembly's classification is palpably irrational and, hence, constitutionally intolerable."

In the case of *Thompson* v. *Whitely,* 344 F. Supp. 480 (E.D.N.C., 1972), the applicable statute provided that where the annexing municipality had less than 5,000 residents, no vote on the annexation was permitted in the area to be annexed. Certain towns and counties were exempted from this procedure. In these instances a vote was required in the area to be annexed if requested by at least fifteen (15%) percent of the voters of such area. In holding that this statutory procedure did not involve fundamental voting rights, the Court, in *Thompson,* stated:

> "Plaintiffs claim, however, that the usual presumption of reasonableness is not applicable here because the statutory scheme in question denies them a fundamental right — the right to vote . . . We agree with plaintiffs that they suffer discrimination by this statutory scheme. Although the state could have denied the vote to all residents as to annexation, see *Hunter, supra,* it has not chosen to do so. By allowing some residents to vote, the state has created a 'right' which may not be denied others in violation of the United States Constitution . . . We believe, however, that the right to vote in the present case is not a fundamental right evoking the stricter standard of review. Unlike the right to vote called 'fundamental' by the United States Supreme Court, *Yick Wo* v. *Hopkins,* 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L.Ed. 220 (1885); *Reynolds* v. *Sims,* 377 U.S. 533, 561-562, 84 S. Ct. 1362, 12 L.Ed. 2d 506 (1964); *Harper, supra,* 383 U.S. at 667-668, 86 S. Ct. 1079, 16 L.Ed. 2d 169; the right to vote in the referendum here does not relate except indirectly to participation in representative government. . . . Therefore we apply to this case the 'traditional standard' of review, under which 'equal protection is denied only if the classification is 'without any reasonable basis'. *Shapiro, supra,* 394 U.S. at 638 n. 20, 89 S. Ct. at 1333."

Also see *Garren* v. *City of Winston Salem,* 463 F. 2d 54 (4th Cir., 1972); *Murphy* v. *Kansas City, Missouri,* 347 F. Supp. 837 (W. D. Mo., 1972).

The case of *Town of Lockport, New York* v. *Citizens for Community Action at the Local Level, Inc.,* 430 U.S. 259 (1977) is relied upon by the instant Appellants, but is, in fact, precisely in accord with Appellee's position. In *Lockport,* New York provided that a new county charter would go into effect only if approved in an election by separate majorities of the voters who live in the cities within the county and of those who live outside the cities. The proposed charter in *Lockport* received a combined majority approval, but not separate majority approval.

This Court, in *Lockport,* upheld the validity of the statute against an equal protection challenge. In so holding, this Court did not seek a compelling state interest to justify the statutory classification, but instead, afforded the statute "the presumption of constitutionality to which every duly enacted state and federal law is entitled" (*Lockport,* at 430 U.S. 272), and found the classification not to violate the Equal Protection Clause of the Fourteenth Amendment.

This Court, in *Lockport,* also expressly recognized that a similar statutory classification in the context of annexation proceedings would not be violative of the Equal Protection Clause. (430 U.S. at 271).

The Michigan statutory annexation procedures do not involve a denial of "fundamental" rights so as to require the demonstration of a compelling state interest to satisfy constitutionality. 1970 PA 219 is constitutional if it has a reasonable basis.

C. There Is No Substantial Federal Question As To Whether The Annexation Procedures Challenged In The Instant Case Bear A Reasonable Relation To The Objects Of The Legislation.

This Court has held:

> "that the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which ef-

fect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U.S. 420, 425-426 (1961).

It has also been held that there is nothing constitutionally prohibited in classification per se; it is only when there is no reasonable state of facts to sustain such classification, thereby making the classification arbitrary and without a reasonable basis, that equal protection is deemed to be denied. *Village of Belle Terre* v. *Boraas*, 416 U.S. 1 (1974); *Atlanta Bowling Center, Inc.* v. *Allen*, 389 F. 2d 713 (5th Cir., 1968); *Alkire* v. *Cashman*, 350 F. Supp. 360, aff'd. mem., 377 F. 2d 480 (1972).

In the case at bar, Appellants challenge the statutory classification permitting referenda on annexations where more than one hundred (100) persons reside in the area to be annexed and denying the right to a referendum on a proposed annexation where less than one hundred (100) persons reside in the area to be annexed.

In affirming the constitutionality of this procedure under the Equal Protection Provision of the Michigan Constitution, the Michigan Supreme Court, relying upon Michigan Constitutional standards (*Manistee Bank & Trust Co.* v. *McGowan*, 394 Mich 655, 232 NW. 2d 636 (1975)) found the classification to bear a substantial relation to the object of the legislation. The Michigan Supreme Court stated:

"We are of the opinion that the challenged classification bears a substantial relation to the object of the legislation: providing a means appropriate to the resolution of disagreements concerning annexation of territory to a city."

"Some territory annexed will be sparsely populated or unpopulated while other territory will be more heavily populated. The challenged classification, responsive to that factual difference, tends to prevent venal abuses which there is reason to believe may occur if few persons (or a small group of persons) have absolute power to prevent an annexation economically advantageous to other persons or the community at large. See *Weber* v. *Thousand Oaks City Council*, 9 Cal 3d 950; 109 Cal Rptr 553; 513 P2d 601 (1973), sustaining against an equal protection challenge a classification providing for a referendum if the area has more than 12 resident registered votes but dispensing with a referendum where there are fewer voters. It was not violative of the Equal Protection Clause to draw a line, and the line drawn (at 100) was not unreasonable." (401 Mich at 666-667; Appendix 85a-86a)

Classifications such as that existing in the instant case with respect to the State of Michigan annexation procedures have been upheld in numerous cases against an equal protection challenge.

In the case of *Adams* v. *City of Colorado Springs*, 308 F. Supp. 1397, aff'd. mem., 399 U.S. 901, rehearing denied 400 U.S. 855 (1970), the annexation statute at issue permitted electors in the area to be annexed to vote on the proposed annexation when the area to be annexed had at least one-sixth but not more than two-thirds contiguity with the annexing municipality. The statute did not permit an election if the area to be annexed had over two-thirds contiguity with the annexing municipality. In rejecting plaintiffs' argument that this statute constituted an arbitrary classification and that there existed no rational basis for the Legislature's distinction, contrary to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; the Court stated:

"We are unable to hold that the distinction recognized by the Assembly as to when the franchise may be exercised is unreasonable in light of the manifest purposes for the differentiation. Thus, where the area to be annexed has less than two-thirds contiguity with the annexing city, the interrelationship between the annexed area and the city may not be great enough to warrant a politically undesirable unilateral merger. Where, however, the territory to be annexed has over two-thirds contiguity with the annexing city, the interrelationship between the two areas is or can be so close that the city should be allowed to annex despite the unwillingness of the residents of the annexed territory. The law thus recognizes that a municipality such as Colorado Springs is severely handicapped by an annexation law which requires the approval of the property owners and qualified electors of an annexed area. It is unable to deal with groups of citizens who form small tax colonies on the borders of the core city which is the economic base of the urban area and to which the colonies owe their very existence and yet pay nothing for the advantages which the city provides. These people would seldom consent to the annexation and their non-consent would threaten the very existence of the core city."

"There are governmental as well as economic implications. The metropolitan area is a single social and economic unit, yet it has no consolidated government. Governmental consolidation permits a united approach to solving the problems and supplying the needs of the urban area, in terms of planning and rendition of service as well as fiscal balance."

In the case of *Weber* v. *City Council of Thousand Oaks,* 9 C. 3d 950, 513 P 2d 601 (1973), the annexation statute provided for the right to vote on an annexation if twelve (12) or more voters resided in the area to be annexed. No election was permitted if less than twelve (12) voters resided in the area to be annexed.

In affirming the constitutionality of the annexation procedure, the *Weber* Court stated:

"The Legislature may reasonably have concluded in such situations that the expense of annexation election procedures (see §§ 35016, 35123-35133) or the governmental interest in avoiding tiny pockets of unincorporated territory outweigh considerations in favor of obtaining a majority vote of the residents. (Cf. *Olson* v. *City of Hawthorne* (1965) 235 Cal. App. 2d 51, 54-55 [45 Cal. Rptr. 48].)"

"A legislative classification may satisfy the traditional equal protection test without being the most precise possible means of accomplishing its legislative purpose. Only a reasonable relationship to that purpose is required. (*Whittaker* v. *Superior Court* (1968) 68 Cal. 2d 357, 370-371 [66 Cal. Rptr. 710, 438 P.2d 358].) The definition of 'uninhabited territory' in the 1939 act (§ 35303) is sufficiently related to the legitimate purposes to satisfy equal protection requirements."

Also see *Thompson* v. *Whitely,* 344 F. Supp. 480, 485 (1972); *Murphy* v. *Kansas City, Missouri,* 347 F. Supp. 837 (1972); *Doyle* v. *Municipal Commission of the State of Minnesota,* 340 F. Supp. 841 (D.C. Minn., 3rd Div., 1972); *Forks* v. *City of Warsaw,* 273 NE2d 856 (Ind., 1971); *City of Montecello* v. *Adams,* 200 NW2d 622 (1972).

In the case of *Town of Lockport, New York* v. *Citizens for Community Action at the Local Level, Inc.,* 430 U.S. 259 (1977), relied upon by Appellants herein, this Court recognized that there are differences in the interests of voters residing in a city and those not residing in a city and that a legislative classification differentiating between voters in these entities is not violative of equal protection standards.

The New York municipal scheme of cities, villages and towns is comparable to that existing in Michigan. The recognition by this Court in *Lockport* that voters in cities and towns have differing interests is also applicable to the rec-

ognition by the Michigan legislature that the interests of cities may be different than the interests of sparsely populated township areas with respect to annexation proceedings. Setting forth statutory classifications with respect thereto is not constitutionally prohibited.

It is also well to keep in mind that in many of the annexation procedures challenged in the aforecited cases, there was no statutory provision for review of the proposed annexations. This is to be contrasted with the Michigan annexation procedures whereby the Michigan State Boundary Commission, acting pursuant to statutory criteria, must approve the proposed annexation, even where no right of referendum is permitted.

Thus, Appellants' allegations in their Jurisdictional Statement to this Court that cities in Michigan have unfettered discretion to annex townships at their will is untrue. For example, Table I, set forth at page 43 of Appellants' Jurisdictional Statement demonstrates that out of one hundred five (105) petitions for annexation submitted to the Michigan State Boundary Commission between 1971 and Feb. 15, 1978 which reached a final resolution, only fifty-three (53) of such petitions were approved, while twenty-eight (28) petitions were denied and twenty-four (24) petitions were rejected due to legal and formal errors.

Appellants have raised no substantial Federal question as to the constitutionality of 1970 PA 219. The Decisions of this Court, of lower courts in the Federal system, and of state courts are consistent in holding that statutory annexation procedures similar to that existing in Michigan have a reasonable basis and are not violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Appellee, City of Novi, submits that the instant Appeal should be dismissed, or in the alternative, that the Decision of the Michigan Supreme Court be affirmed.

CONCLUSION

WHEREFORE, for the reasons hereinbefore stated, Appellee, City of Novi, respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Michigan.

Respectfully submitted,

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